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TRANSCRIPT OF RECORD

United States Court Of Appeals

TENTH CIRCUIT

No. 5662

JOHN J. SPRIGGS, SR., Appellant,

vs.

PIONEER CARISSA GOLD MINES, INC., a corporation; and GEORGE B. COLEMERE, HARRY H. HIME, SPENCER J. LEWIS, FRED H. BLUME and HARRY S. HARNSBERGER, Appellees.

Appeal From The United States District Court
For The District Of Wyoming

United States Court Of Appeals

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Pleas and proceedings before the Honorable Ewing T. Kerr, Judge of the United States District Court for the District of Wyoming, presiding in the following entitled cause:

JOHN J. SPRIGGS, SR., Plaintiff,

vs.

PIONEER CARISSA GOLD MINES, INC., a corporation, and GEORGE B. COLEMERE, HARRY H. HIME, SPENCER J. LEWIS, FRED H. BLUME and HARRY S. HARNSBERGER, Defendants.

No. 4051, Civil.

1] Complaint.

Jurisdiction.

Jurisdiction herein is conferred on this court by 28 U S C Sec 1343 to recover damages to the person and property of plaintiff because of the deprivation of rights and privileges of plaintiff, a citizen of the United States, guaranteed plaintiff by the 14nth and also the 5th Amendments to the constitution of the United States, and as well also as guaranteed by the Bill of Rights, Sections 2-6-7-8-9-20-32-33-34 of Art I Wyoming constitution; and Sec 3-907 Wyo Stat 1945; and general substantive law of the United States and of Wyoming-by acts done in furtherance of a conspiracy mentioned in Sec 47-Title 8 U S C, as hereinafter set forth.

First Cause of Action.

1 For a First Cause of Action plaintiff says this is an action to redress the deprivation under color of law of the State of Wyoming of Civil Rights guaranteed plaintiff by the 14nth and also the 5th Amendments to the constitution of the United States which forbid the taking of the property of plaintiff without due process of law, and guaranteeing to plaintiff

the equal protection of the law. And also depriving plaintiff of the same rights as guaranteed him by the Bill of Rights of the Wyoming constitution, especially Sections 2-6-7-8-9-20-32-33-34 of Art I Wyoming Constitution; and Sec 3-907 Wyo Stat 1945 and as guaranteed plaintiff by the substantive law of the United States and of Wyoming as hereinafter set forth by and thru a conspiracy of defendants done knowingly, willfully, and with a bad motive to wrong and injure plaintiff.

And further depriving plaintiff of the equal protection of the final conclusive judgments of the District Court of Fremont County, Wyoming in cases 4182 and the ancillary case No 4623 of that court; and of the final conclusive judgments of the Supreme Court of Wyoming in case 40 Wyo 524, and cases 1667 and 1776 of that same court.

And in contravention of the property rights of plaintiff as decreed in the properties known as the Carissa Groups of mining properties, located in sections 20 and 21 of Tp 29 North of Range 100 West of the 6th P M-Wyoming-more particularly designated as Mono No 1; and Mono No 2; and Oro Fino; and Jeanette; and Polly Perkins; and Eight of Diamonds; and Homestake; and the Mohamet Group consisting of the Alpine, Ben Hur, Wolverine, Charles Dickens, and J C S Lode Mining Claims; and the Lucky Strike, Hermit, Carissa, and Mono Tracts A and B,-Placer Mining Claims in Fremont County, Wyoming. And the said Barney M Tibbals did by deed delivered to plaintiff on March 3, 1933, deed and convey to plaintiff an undivided 11/24th interest in and to all of said properties, including the mining equipment, tools and machinery thereon. And defendants herein actuated by malice and ill-will, bias and prejudice towards plaintiff have willfully and with a bad motive deprived this plaintiff of his constitutional rights to the possession, use and enjoyment of his vested constitutional rights to said properties so acquired by him as aforesaid. And have likewise and by the same conduct deprived plaintiff of his good reputation, and good name; and have deprived him of his constitutional rights to be freed from neverending illegal litigation; and have deprived plaintiff of his equal right to liberty, freedom, and free speech; and denied him a jury trial as guaranteed by Sec 20, Art I, Wyoming Constitution and took away his means of livelihood, and suspended him from the right to practice his profession as attorney. And denied plaintiff his property rights in and to said above

2] described properties as acquired by plaintiff by virtue of a deed of conveyance, dated Feb 20, 1950, from Federal Gold Mining Company, and one from the executors of the Last Will and Testament of John C Spry, deceased of same date, where said grantors as prior owners of all of said properties conveyed to plaintiff any and all right title and interest, and rights of action, which said grantors had, or claimed to have in and to said properties, which would be subject to the rights conveyed to said Tibbals by the court deed of Oct 15, 1932, and the rights of his widow Anna Tibbals who likewise held a deed from Barney N Tibbals to the 13/24 interest deeded to her by said Barney N Tibbals.

2 That such deprivation of the Civil Rights of plaintiff, and his right to the possession, use and enjoyments of his vested property rights in and to the above described properties and his civil right of which he was deprived was accomplished by defendants under color of law by virtue of a judgment of the supreme court of Wyoming, dated Oct 7, 1936, in a case then pending in said court wherein Barney N Tibbals and John J Spriggs were plaintiffs and appellants, and Marshal Graham, receiver of the Midwest Mines Corporation et al were defendants and respondents, which said case is reported at 50 Wyo 277, where the said plaintiffs and appellants sought possession of the above described properties and property rights which plaintiffs had acquired by virtue of the final, absolute, conclusive judgment of the District Court of Fremont County, Wyoming in said case 4623 aforesaid on Oct 15, 1932, wherein said court obeyed the mandate of the supreme court of Wyoming in case 50 Wyo 524 by sale, deed, and confirmation of sale and deed of the said properties to Barney N Tibbals who had
3] in turn deeded and conveyed to plaintiff herein said 11/24 interests in and to all the same, That said judgment and action of the supreme court of Wyoming in said case 50 Wyo 277 was absolutely void in that the supreme court was without jurisdiction to render the particular judgment it did; and acted in excess of jurisdiction in rendering the particular judgment it did; and was further void in that is was actuated thru the bad and illegal and unconstitutional motive of bias, prejudice, partiality, and ill-will towards the said plaintiffs and appellants therein; and was a taking of the property and property rights of this plaintiff in violation of the said Fourteenth Amendment, and the Fifth Amendment to the constitution of the United states, without due process of law, and constituting a

denial of the equal protection of the law as guaranteed by said provisions of the constitution of the United States; and further deprived plaintiff of his constitutional and legal rights guaranteed to him in the Bill of Rights of the Wyoming constitution hereinbefore set out and listed in paragraph 1 of this petition, and was a taking of his property and property rights without due process of law, and a denial of the equal protection of the law as guaranteed plaintiff by both of said constitutions aforesaid.

3 Plaintiff shows the court that defendant Fred H Blume was at all of the times mentioned a judge of the supreme court of Wyoming; that defendant Harry S Harnsberger was attorney for said Marshal Graham, receiver of the Midwest Mines Corporation in said case 50 Wyo 277. That the deprivation of the Civil Rights and property rights of plaintiff thru said case 50 Wyo 277 was the result of a conspiracy between said Harry S Harnsberger, as attorney, and Fred H Blume, as judge in case 50 Wyo 277, and other persons, and judges now deceased. That said conspiracy has continued since the judgment in said case 50 Wyo 277, on Oct 7, 1936 on down to the present time, and plaintiff has ever since said date, and is now and yet deprived of all of said civil rights, and constitutional and legal rights of which he was deprived under color of law by said void decision of the supreme court in said 50 Wyo 277 aforesaid. And that the other defendants later joined in said conspiracy, as hereinafter set forth, and by and thru their participation in perpetuating the the deprivation of the said civil, legal, and constitutional rights of which plaintiff was deprived by virtue of 50 Wyo 277, plaintiff is now deprived of the same civil, legal and constitutional rights of said properties and to the possession, use and enjoyment of the same.

4 Plaintiff shows the court that on March 17, 1928, Barney N Tibbals, who was then the owner and holder of a First Trust or lien in and to all of said Carrissa mining properties set forth and described in paragraph 1 of this Complaint, with mining equipment, tools and machinery thereon filed case 4182 in the District Court of Fremont County, Wyoming, that being a court of general competent jurisdiction, with jurisdiction over the subject matter, and parties to the action, which case was entitled, Barney N Tibbals, plaintiff vs Rollin W Keys et al as executors of the Last Will and Testament of

4] John C Spry deceased, and served summons therein on March 17, 1928. That the object and purpose of said suit was to foreclose said First Trust and appropriate the properties to the satisfaction of said First Trust of Tibbals. That as provided by Sec 3-907, Wyo Comp Stat 1945, and as established by the law of Wyoming and of the United States, the said properties were and became by virtue of the summons in case 4182 on March 17, 1928 in the prior, sole, exclusive and absolute jurisdiction, custody and control of the court in said case 4182 aforesaid. That this exclusive jurisdiction over the properties and parties therein continued on until the purposes of the suit were accomplished and exhausted by final judgment, sale and deed of the properties, and confirmation of sale and deed to Barney M Tibbals on Oct 15, 1932, and then on to protect the tile of said Tibbals as purchaser at said sale, and on to protect the title of plaintiff, the grantee of said Tibbals to the 11/24 interest in all the same acquired by plaintiff thru deed from said Tibbals on March 3, 1933.

5 Plaintiff further shows the court that during all the time after March 17, 1928, no other subsequent concurrent court had jurisdiction to interfere with, obstruct, defeat, delay, modify alter or in any way molest the prior process of the court in said case 4182, and the supreme court judgment in 40 Wyo 524, establishing the First Trust and ordering sale to satisfy said First Trust, or of the court in the ancillary case in 4623 which carried out the mandate of the supreme court in 40 Wyo 524 by sale and deed of the properties to Tibbals, and that any attmpt of any such subsequent court of concurrent jurisdiction to do so was absolutely void, and without jurisdiction, and in excess of jurisdiction, is absolutely void and is no justification or authority to any such court or any person or parties whomsoever relying on or acting in pursuance of such void action of such subsequent court, and this includes and applies to all of the defendants herein.

6 Plaintiff shows the court that on Oct 17, 1929 the supreme court of Wyoming rendered its final judgment on appeal in said case 4182 aforesaid. And did therein and thereby establish the First Trust and lien of said Tibbals in and to all of the said Carissa mining properties aforesaid in the sum of $17,500. and interest, and did therein decree foreclosure of the First Trust by sale of said properties to satisfy said First Trust, as reported in 40 Wyo 524 and did order and

direct the lower court to carry out its mandate by sale of the properties to satisfy said First Trust of Tibbals.

7 Plaintiff shows the court that said Spry, deceased, owned the Federal Gold Mining Company and some of the mining claims were in the name of Spry, individually, and some in the name of said Spry owned corporation, but that the written First Trust covered all the properties in both names, and the court so found and adjudged it as one entity.

8 Plaintiff shows the court that when the mandate of the supreme court in 40 Wyo 524 reached the lower court, the Federal Gold Mining Company, represented by the same attorneys of the Spry estate in 40 Wyo 524, asked Intervention, setting up the annoying absurd claim of ownership in Federal
5] Gold Mining Company by adverse possession. The lower court denied the intervention, obeyed the mandate of the supreme court in 40 Wyo 524 and ordered all claims in both names to be sold to satisfy the Tibbals First Trust which it established at the sum of $17,500. and interest thereon at 7% per annum from April 29, 1930, the date of the judgment. The Federal Gold Mining Company appealed back to the supreme court from its denial of Intervention. This was case 1776 in the supreme court. Tibbals filed his brief, moved for dismissal, and the case on appeal was dismissed.

9 Plaintiff further shows the court that on the same day the court denied Intervention, the lower court issued a restraining order enjoining Tibbals from getting execution on the final judgment in case 4182, entered under mandate of the supreme court in 40 Wyo 524. Tibbals then filed a mandamus action, case 1667 of the supreme court to compel dissolution of the restraining order. The supreme court sustained this and the restraining order was dissolved. This gave Tibbals three final judgments of the supreme court establishing his First Trust and ordering sale to satisfy his First Trust.

10. Plaintiff shows the court that before Tibbals could get execution in case 4182, the same parties filed an ancillary case, No 4623 in the District Court of Fremont County Wyoming, entitled Federal Gold Mining Company vs Barney M Tibbals, setting up the same claim of title against Tibbals, and secured another restraining order that enjoined

Tibbals from executing the final judgment of the court in case 4182, ordering sale under the supreme court mandate in 40 Wyo 524. Tibbals applied to the supreme court for a contempt citation against both the lower court judge and the attorneys for again obstructing the process of the supreme court, 40 Wyo 524, and the District Court entering judgment on the mandate in case 4182. This was denied, and Tibbals had to undergo further endless annoying litigation.

11 Tibbals filed his answer in case 4623, set up the prior adjudications between the same parties as conclusive. Further alleged the ownership of Federal Gold Mining Company by said Spry. That it had been a party to case 4182, its president being chief attorney for Spry estate in case 4182 and like allegation. And set up this special plea to be relieved from further annoying, useless, neverending ~~litigation,~~ towit: Alleged:

"That defendant (Tibbals) has already for the Third time asserted and maintained by proper judicial procedure against the plaintiff herein, the claim, trust and lien established in the judgment, Ex "A" hereto attached and made a part hereof.

First, in suit 4182 wherein the plaintiff was in truth and fact an actual party as hereinbefore set forth.

For the second time, in the election of remedy by plaintiff in bringing his application for Intervention, wherein defendant again prevailed in the District Court, wherein the same was denied; and in the supreme court wherein the appeal was dismissed.

And again on application for a restraining order, wherein plaintiff again elected its remedy and prosecuted said action, securing the said restraining order which was dissolved by the supreme court in case 1667; and the order of the District court on March 18, 1931, being Ex "J" herein.

6] "That the defendant Tibbals has been compelled to come into court on said three prior occasions and litigate with plaintiff the identical trust, lien and claim, which he has sustained in all said proceedings against the contentions of plaintiff, which are the same properties--the same trust and lien-the same parties,-and the same issues as plaintiff

seeks in the present action to establish.

"That the defendant has been annoyed, harrassed, put to great expense and compelled to undergo great hardship; and has been delayed in the endorcement of his legal rights as established in the judgment Ex "A" hereto attached.

(This was the judgment in case 4182 rendered on the mandate of 40 Wyo 524)

"The time of the court has been taken by said proceedings, and by the election of unsuccessful remedies of plaintiff to that the defendant is entitled to be freed from further litigation--to have litigation with tho plaintiff end-to have an end to litigation with plaintiff involving the same subject matter. And the repeated, and yet repeating actions; and renewed selection of unsuccessful remedies by plaintiff has given plaintiff its day in court three times heretofore for the same cause of action, and the same subject matter.

"And the obstinate and stubborn litigant by bringing the present action has so infringed the rights of defendant Tibbals to have litigation end, that plaintiff and his action is a public nuisance.

"And the rights of defendant mingle with those of the public to such an extent that public policy, and public interests demand that the cause should go out of court--and the petition dismissed.

"And defendant is entitled to have said litigation end with the dismissal of the petition herein. And the sustaining for the Fourth Time of the trust, lien, claim of the defendant in and to said properties--all as decreed in said judgment Ex "A".

12. Plaintiff shows the court that while Tibbals was up in the supreme court litigating case 4182--40 Wyo 524- the defendants therein- the executors of the Spry estate, and the Federal Gold Mining Company, the Spry owned corporation- gave a 4 year lease, from Oct 10, 1928 to Oct 10, 1932, for mining purposes, to Midwest Mines Corporation, on the same identical mining properties involved in the prior case 4182- and 40 Wyo 524 aforesaid. That this subsequent lessee, in

addition to being a privy, bound and precluded by the final judgment in case 4182- and 40 Wyo 524--and case 4623, aforesaid, was an actual party to all of said proceedings. It supplied the restraining bonds in those cases, supplied costs for attorney fees of defendants in case 4182-and on the Intervention proceedings, and cases 1667 and 1776, and in such respects was an actual party to all those proceedings, cases 4182-40 Wyo 524, cases 1667-1776 and 4623. Further that as such subsequent lessee, it was barred by sec 3-907 Wyo Stat 1945, by the universally law of prior exclusive jurisdiction, custody and control hereinbefore set up, as decreed and established by the supreme court of the United States, by the Federal Courts, by different State Supreme Court of other States, and by the supreme court of Wyoming in prior case for other litigants under like and similar facts and conditions, from any adverse rights whatsoever as against Tibbals, and plaintiff, as his grantee aforesaid. And that under the 14 Amendment of the U S Constitution, and the Fifth Amendment, and the statutory and substantive law of the land, plaintiff Tibbals in the prior case 4182-40 Wyo 524- was freed from taking notice of or litigating with the subsequent lessee, or its receiver, any adverse claim whatsoever that such subsequent lessee might assert to these properties, and this plaintiff as grantee of Tibbals, has the same constitutional rights in such premises.

13 Plaintiff shows the court that a creditor, J J Marrin, on Nov 3, 1930 filed case 4561 in the District Court of Fremont County, Wyoming entitled J J Marrin, plaintiff vs Midwest Mines Corporation, to recover a debt of $901.25 which plaintiff claimed was owed him by Midwest Mines Corporation, and set up the other defendants claimed an adverse interest as against the plaintiff. That the plaintiff never prosecuted his action to judgment, never secured a judgment establishing his debt, or declaring the same to be a lien, or in any way complying with the lien statutes of Wyoming. That the plaintiff died in 1943, and there was no revivor of action, and since that date there has been no plaintiff in case 4561. That the franchise of Midwest Mines Corporation was forfeited by the state of Wyoming in 1933.

14 Plaintiff shows the court that in case 4561 the court did adjudge the Midwest lessee insolvent, and unable to pay the $901.25 debt, and did appoint one Marshal Graham, a creditor, inelligible under Sec 3-7302 Wyo Stat 1945, to be a receiver, appointing him without notice or hearing to the adverse parties.

That neither Barney N Tibbals, nor John J Spriggs were made parties to the action. That the petition set up the prior Trust of Tibbals as established in the judgment in case 4182, and 40 Wyo 524. That neither said Tibbals nor this plaintiff are required to take notice of this subsequent collateral case, and their prior rights are not affected by anything the court did in this subsequent collateral case.

15 Plaintiff shows the court that on application to the court in this case 4561, and also in case 4623, on an allegation that he had some interest in the properties on behalf of creditors of the Midwest Mines Corporation, he the receiver was directed to appear in case 4623 and set up such pretended claims, which he did. He filed an answer setting up that creditors of this subsequent lessee had an interest prior to Tibbals or any other party to the properties.

16 Plaintiff shows the court that on final trial in case 4623, when the court announced his finding for Tibbals, establishing his First Trust, and his judgment to foreclose the First Trust under the mandate of the supreme court in 40 Wyo 524, the attorney who had filed case 4561, as attorney for said plaintiff, and who was at the same time attorney for Federal Gold Mining Company, and the executors of the Spry estate, suing his own clients, arose and these proceedings took place;

"Attorney; We have here the receiver for creditors of the Midwest lessee who must be protected.

"The Court; Don't tell this court that. He could have no rights to these properties; the statute fixes his rights"

And thereupon the court in case 4623, for the express purpose of excluding the receiver from any claim of right to the properties did make this express decree, excluding him from any claim to any possible surplus. After making provision for the sale to satisfy the Tibbals trust, the court did decreed in express words the exclusing of the receiver from any rights whatsoever even in the surplus at the sale in the following words;

8] "And the remainder, if any there be, shall be paid to the Clerk of this court for plaintiff, (FGMC) or such

distribution between the plaintiff and the estate of John C Spry, deceased, as the court may afterwards determine in case of presentation of any adverse claims"

17 The purpose of this provision for distribution was that as part of the claims were in the name of Federal Gold Mining Company, and some in the individual name of Spry whose estate was being probated, it might be the executors for the sake of the record would want to account in probate for their part of the surplus, even tho the court had decreed one entity in fact.

18 The court did then in case 4623, obey the mandate of the supreme court in 40 Wyo 524; Did establish the Tibbals trust at $17,500. and interest at seven percent per annum from April 29, 1930, the date of the final judgment in case No 4182. Did make the judgment in case 4182 a part of the judgment in case 4623. Did decree foreclose and sale. Did find that the Federal Gold Mining Company was and had been at all times an actual party to case 4182- and 40 Wyo 524, bound and precluded thereby. Did dissolve the restraining order, and did issue a counter restraining order for Tibbals, enjoining the Federal Gold Mining Company, its officers, agents, and all others acting for or on its behalf from further interferring with Tibbals in getting execution, or molesting him, or the purchaser at the sale, from interferring with the title, or preventing Tibbals from the full enjoyment of the fruits of his judgment. And did set the day of sale at Oct 15, 1932, five days after the Midwest lease would expire on Oct 10, 1932, for the express purpose of avoiding any possible interference by the lessee or his receiver after date the lease would expire.

19 Plaintiff shows the court that the adverse parties did file a written Waiver of Right of Appeal, and ask that the judgment be final, absolute and conclusive. That the receiver Graham, who in the meantime had held a receiver's sale, and purchased all the property of the Midwest lessee, and the unexpired 6 weeks term of the lease, filed over his own signature his written ratification of the judgment, and asked sale and confirmation of sale without further notice. Plaintiff says this final judgment in case 4623 was executed by sale of the properties, and with deed, and confirmation of sale and deed to Barney M Tibbals on Oct 15, 1932. That the final judgment, sale, deed and confirmation of deed are all final, absolute

conclusive, and res judicata of the rights of said Tibbals and plaintiff as his grantee, and was not subject to relitigation by any court in any subsequent collateral proceedings, and are conclusive of the title of plaintiff to the properties acquired under the said deed from Tibbals.

19 Plaintiff shows the court that in the meantime, over in the subsequent collateral case 4561 aforesaid, to which neither plaintiff nor said Tibbals were parties, and of which he is not required to take notice of, or litigate any party therein, and is freed from litigating with defendants herein any matters or claims arising out of said case, the said Marshal Graham receiver on Sept 1, 1932, did on order of the court in case 4561, to close the receivership, sell all of the property of the Midwest lessee and all of the property claimed to be in receivership, listing the same as the mining machinery and personal property of the Midwest lessee, and listing specifically the lease which had 6 weeks unexpired term, in full satisfaction of the Marrin $901.25 claim, and all other debts whatsoever of the said lessee, and all receivership costs and demands whatsoever, including a fee of $5000. for the receiver, and a like fee of $5000. for the attorney of the receiver. The court confirmed the sale to Marshal Graham, trustee for the creditors, who purchased as such trustee, and ordered conveyance to said trustee, which was done. And the said trustee as such trustee and purchaser, without any application to or order from the court, but acting as any purchaser would do, optioned away his purchase to one Clement Quinn for the sum of $34,500.

9] 20 Plaintiff shows the court that in case 4561 the RES of the receivership, and as the same was therein adjudged in case 4561, in its sale and other proceedings, consisted only of the property of the lessee which it claimed to own and which could be sold by the court to satisfy the debts of the lessee. That at no time was the fee simple title to the property resting in Federal Gold Mining Company, and the said Spry estate included in the RES. That the fee simple title to the properties was in the sole, prior, exclusive jurisdiction, custody and control of the court since March 17, 1928 in the court in said cases 4182, and 40 Wyo 524, and cases 1667 and 1776, and the ancillary case of 4623, aforesaid. That the court in case 4561 had no jurisdiction, custody or control whatsoever over the fee simple title to

the properties which was sold by the court to Tibbals Oct 15, 1932 in case 4623 aforesaid, and the court in case 4561 well understood, accepted and abided by that law, and sold only the personal property of the lessee and the unexpired 6 weeks term of the lease. And the lease expired by the terms of its own limitations on Oct 10, 1932, which was 5 days prior to final sale, deed and confirmation of sale and deed to Tibbals in case 4623 on Oct 15, 1932.

21 Plaintiff shows the court that on or about March 3, 1933, the said Marshal Graham, then pretending to act as receiver of the Midwest Mines Corporation, lessee aforesaid, went in and took possession of all the properties which the court in case 4623 sold and deeded to Barney N Tibbals on Oct 15, 1932, as aforesaid. That said Tibbals had by a deed dated Aug 23, 1932 and delivered to plaintiff March 3, 1933 conveyed to plaintiff an undivided 11/24th interest in all of said properties which he had acquired at said court sale in case 4623 aforesaid. And that said Barney N Tibbals and John J Spriggs as plaintiffs then filed case 4871 vs Marshal Graham, receiver aforesaid, et al, in the District Court of Fremont County, Wyoming to oust said Marshal Graham, claiming as such receiver, from possession of their property.

10] 22 That this case to oust the trespassing receiver reached the supreme court of Wyoming reported at 50 Wyo 277, wherein on Oct 7, 1936, the court rendered its judgment therein denying plaintiff therein possession of their property and holding the trespasser Graham in possession. That defendant Fred H Blume was judge of the court, and defendant Harry S Harnsberger was attorney for receiver Graham. That said judgment was void and the court was without jurisdiction to render the particular judgment it did; and the court acted in excess of its jurisdiction in rendering the particular judgment it did; and the judgment was a taking of the property of plaintiff herein, and his co-litigant therein, said Tibbals without due process of law; and was a denial to plaintiff of the equal protection of the law as guaranteed plaintiff by the 14th and the 5th Amendment to the constitution of the United States; and in contravention to the legal and constitutional rights of plaintiff as guaranteed him by the Bill of Rights of the Wyoming constitution hereinbefore in paragraph 1 set up. And in contravention to the final, conclusive judgments of the supreme court of Wyoming in case 40 Wyo 524, and cases 1667 and 1776

of the same court, and the final judgment, sale, deed and confirmation of sale and deed of the properties to Tibbals in case 4623 aforesaid, and the said deed of Tibbals to plaintiff hereinbefore set up.

23 Plaintiff shows the court that in October 1936 plaintiff was a candidate for judge of the Wyoming supreme court. That he published campaign adds criticising the supreme court for its court rule requiring litigants to file copies of an abstract of the pleadings, evidence and record, where the costs were increased on appeal so that often the poor man was denied justice because of inability to pay these extra costs on appeal. And further that the costs were unnecessary, and enabled the judges to save labor from reading the official statutory record, and gave them ease. The court in its opinion, rendered just prior to election day, inserted in the opinion matters outside the issues, such as these "the costs for appeal are no more in this state than other states; the abstracts need not be printed; the life of the judge is not one of ease". The press published these as being an answer to plaintiff's campaign adds.

24 The court in rendering its void opinion in case 50 Wyo 277 aforesaid, and as an excuse to deny plaintiff and said Tibbals possession of their property, resorted to the illegal and unconstitutional procedure of creating facts and jurisdiction on which to frame its void opinion by judicial assertion. The court created by judicial assertion to false and untrue premises, namely; 1 The properties at the time of the judicial sale to Tibbals in case 4623, were in receivership in case 4561; 2 There was fraud practiced on the receiver in the sale in case 4623. And it based its opinion on these judicially created false premises, neither one of which was true in fact or law. There was not the semblance of justification either in fact or law for the existence of eaither of the false premises. The creation of these false judicial assertions was conceived by said Attorney Harnsberger and executed by said Fred H Blume, judge in case 50 Wyo 277. That thereby the good name and reputation of both plaintiff and said Tibbals was blasted, unlawfully branded with the charge of fraud, and their said property taken from them without due process of law.

11] 25 Plaintiff shows the court that said Tibbals and

Spriggs, as plaintiffs in case 50 Wyo 524 filed their petition for rehearing, setting up the insertion in the opinion of matters outside the issues; that these had been published by the press as answers to said campaign adds; that the opinion was contrary to the final conclusive judgments in 40 Wyo 524, and cases 4182, and sale and deed in case 4623, and like reasons. They asked that unbiased judges be called in to pass on the final rehearing petition. This ended up with Attorney Harnsberger suggesting to the court that plaintiff was in contempt for saying the judges were biased, and set up that portion of the petition for rehearing which set forth the above grounds. Over the protest of plaintiff Judge Blume made an order, as one of the judges of the court, permitting said Attorney Harnsberger to appear under the false guise of Friend Of The Court and prosecute the contempt. The press all over the state published big headlines that the Friends Of The Court charged that plaintiff was unfit to practice law and might be disbarred.

26 Plaintiff shows the court that at the next election when the judge of said supreme court rendering the opinion in case 50 Wyo 277, and the contempt proceedings, came up for reelection, plaintiff also became a candidate against him. He wrote a letter to the lawyers exposing the errors of the court in 50 Wyo 277, and the contempt proceedings, and for this exercise of his constitutional right of free speech guaranteed by Sec 20, Art I of the Wyoming constitution, was prosecuted and suspended from practice, his means of livelihood taken away, and his good name again blasted. That at this hearing, which was a continuation of the prior conspiracy between said Harnsberger and Blume, and others now deceased, the supreme court assigned the same identical judge who delivered the opinion in case 50 Wyo 277 as judge to hear the disbarment proceedings. The last word this judge said to plaintiff was: "Do you still say we were wrong". Plaintiff was then suspended from practice. All these contempt and suspension proceedings were a part of the said conspiracy to compell plaintiff to submit to a taking of his property without due process and to compel him to accept and bow to a denial of equal rights under the law.

27 That said conspiracy was and is a continuing conspiracy and is being perpetrated to the present day. That justice was so delayed, as forbidden by Sec 8 Art I of the Wyoming constitution, and also denied, that Tibbals and plaintiff struggled on to the death of said Tibbals in 1939, unable

to get possession of their property. That on his death bed, Tibbals deeded his 13/24th interest in the properties to his widow Anna Tibbals. That she, with plaintiff is still denied their property without due process of law.

28 That plaintiff has suffered damage in the sum of $750,000. as actaual damages.

12] 33 Plaintiff says he filed a motion to strike the answer of said Judge Harnsberger from the files as it was an illegal pleading, but Judge Lewis denied the motion. Thereafter plaintiff filed a demurrer to the answer for the same reasons and Judge Lewis denied the demurrer. That thereby the influence and weight which the office of supreme judge necessarily carries was illegally used against plaintiff, and he was thereby denied the equal protection of the law. That the said Spencer J Lewis, as judge in case 7521, and Harry H Hime, as said receiver succeeding said Marshal Graham; and Pioneer Carissa Gold Mines Inc, and George Colemere its chief officer and acting also for his personal profit joined in the aforesaid conspiracy with said Harry S Harnsberger, and Fred H Blume to perpetuate the unconstitutional taking away from plaintiff his property aforesaid without due process of law, and denying to plaintiff the equal protection of the law as guaranteed plaintiff by the 14th and the 5th Amendment to the constitution of the United States, and the Bill of Rights of the Wyoming constitution, and statutes and law of Wyoming and of the United States hereinbefore set up, under color of law by the judgment and orders in case 7521, and 4561 aforesaid, and proceeded to abuse the process of the court in said cases and did accomplish said unconstitutional purposes therein and thereby, acting wilfully, knowingly and with a bad motive to wrongfully injure plaintiff, as hereinbefore set up.

34 That on final judgment in case 7521 the said Spencer J Lewis, as judge, did render a void judgment holding the receiver in possession of the properties of plaintiff, and denying to plaintiff the possession, use and enjoyment of said properties. That in this he acted without jurisdiction; and in excess of jurisdiction. That he did thereby relitigate and overturn the final, absolute and conclusive judgments, orders and decrees of the prior courts of competent jurisdiction, acting with jurisdiction over the subject matter, which

was these same properties, and the same subject matter of possession, ownership, and use and enjoyment thereof, and the same parties and their privies, and did exercise the arbitrary power forbidden by Sec 7 Art I of the Wyoming constitution, and did arbitrarily take the property of the plaintiff and give it to the Pioneer Carissa Gold Mines Inc and H H Hime said receiver, when neither of said parties had the semblence of legal right in law thereto.

35 Plaintiff says he did appeal from the judgment of said S J Lewis in case 7521 to the supreme court of Wyoming, where said Fred H Blume was judge. That shortly before the case came before said Fred H Blume, this plaintiff met up with said Blume as said Blume was drinking cocktails at the Wyoming State Bar Meeting in Rock Springs with an Attorney named Stanton. That plaintiff extended his hand to said Blume, with a cordial and friendly greeting; How do you do Judge? But said Blume refused to take the hand of plaintiff or to speak to plaintiff. But when the appeal of plaintiff reached the supreme court, said Blume nursing extreme enmity, illwill, bias, prejudice and malice toward plaintiff sat in judgment on plaintiff and his rights on such appeal and denied the appeal. And on application for reinstatement of the appeal setting up that his property was being taken without due process of law, and
13] that he was being denied the equal protection of the law, and like grounds for relief as hereinbefore set up, the said Fred H Blume, actuated by the same bias prejudice, ill-will, and enmity toward plaintiff did again sit in judgment on the application of plaintiff for reinstatement of the appeal and deny the same. That in so doing he violated Sec 8-Art I of the Wyoming constitution guaranteeing to plaintiff justice without sale, denial or delay, and the fundamental principle of constitutional law that no judge nursing bias or prejudice toward a litigant should sit in judgment on such case. And further violated Sec 7 Art I of the Wyoming constitution forbidding the exercise of arbitrary power over the rights and property of plaintiff. And that the conduct and action of said Blume, judge therein, was void as being the result of such bad motives.

36 Plaintiff says that in June 9, 1954, the said S J Lewis as judge sat further in said case 4561 and made an order on the application of H H Hime, pretending to be receiver of the Midwest lessee, for an allowance to said receiver and his

attorney for more fees. That said S J Lewis did grant said application, and made his void order therein allowing the receiver $1400. and his attorney $1000. and directing that the same be paid out of the property of plaintiff.

37 Plaintiff shows the court that on April 22, 1955 defendant Harry S.Harnsberger filed in case 4561 an application for allowance to him of attorney fees in the sum of $15,000. plus costs and expense money. That he set up his services in securing the void judgment in 50 Wyo 277; that he had negotiated and renegotiated the void contracts and leases for the receiver to Pioneer Carissa Gold Mins Inc, defendant herein. Also set up the contempt proceeding against plaintiff, and like services for holding the trespassing receiver in possession of plaintiffs property since March 3, 1933, and under the contracts which he had so negotiated and renegotiated as he set up, the property of plaintiff had been depleted by the extraction of some $70,000. in minerals by such trespasses. That he asked for a further sum of $5000. for his said successful service to the trespassing receiver. That on June 7, 1956, the said Harrsy S Harnsberger, then a judge of the supreme court, and with the consent and most courteous reception and welcome by S J Lewis, repeatedly referring to him as Mr Justice Harnsberger, the said defendant Harnsberger did appear in person in case 4561 before said S J Lewis judge, and present and conduct his own case, pro se, as attorney, bring to his assistance all the prestige which a supreme court judge carries, and the said S J Lewise did make therein his order allowing said Harnsberger a fee of $7,500. and $500. as expenses, and did order and direct that the property of this plaintiff be sold to pay such sums to said Harnsberger.

38 Plaintiff shows the court that the widow of Marshal Graham deceased also filed a claim of $51,700 in said case for his supposed services in holding possession of the of the property of plaintiff since March 3, 1933, and for making
said contracts with defendant Pioneer Carissa Gold Mines
14] Inc, and its predecessors, whereby they depleted the
property of plaintiff taking out over $70,000. in minerals and selling and disposing of the same, and the said S J Lewis, judge, and defendant herein did make his order allowing the widow of the prior receiver $15,000. and directed that the remaining depleted property of plaintiff be sold to pay this void allowance.

38 Plaintiff shows the court that in the same case, and time, the said S J Lewise did make his order allowing the widow of the prior attorney of the receiver an additional fee of $7,500. with further $543. expense money; and a further allowance of $750. to H H Hime, as receiver; and further $400. for the attorney of Hime, and direct that all of these void allowances be paid from the remaining depleted property of plaintiff. And as a part of said order did decree as follows:

"It Is Further Ordered that the receiver prepare and deliver the the necessary instruments of conveyance to the Pioneer Carissa Gold Mines Inc. And that he deliver the same, properly executed, to said company upon receipt of the payment in full of the purchase price as set forth in the agreement.

39. Plaintiff shows the court that said S J Lewis acted without jurisdiction; and in excess of jurisdiction; that he had no jurisdiction to make said order; that neither the court nor said S J Lewis had jurisdiction over the fee simple title of this plaintiff; that he acted arbitrarily, and exercised arbitray power forbidden by Sec 7, Art I of the Wyoming constitution; and his judgment and order was a taking of property of this plaintiff without due process of law in contravention of Sec 6, Art I of the Wyoming constitution; and was a taking of the property of plaintiff without due process of law in contravention to the guaranties to plaintiff in the 14th and also the 5th Amendment of the constitution of the United States, and a denial of the equal protection of the law under the said 14th Amendment. That plaintiff was thus deprived of his said rights under color of law by the said void judicial acts of S J Lewis acting in case 4561, without jurisdiction to make the void orders aforesaid. That he acted knowingly, willfully, and thru a bad motive in combination and united instigation of the other participating defendants herein.

Plaintiff further shows the court that on Oct 18, 1956, the said S J Lewis did make a further order in case 4561, allowing the attorney of H H Hime the further sum of $337, with an order to pay it out of the remaining depleted property of plaintiff.

39 Plaintiff shows the court that in July 1956 he filed in the supreme court of Wyoming an application for a writ of prohibition to prohibit the District Court of Fremont County

Wyoming, said S J Lewis, and F B Sheldon, judges therein presiding from further holding the receiver in possession of the property of plaintiff, and to oust said receiver, and said Pioneer Carissa Gold Mines Inc from possession of plaintiff's property, showing the supreme court that his property was being taken without due process of law, and that he was being denied his constitutional rights to the equal protection of the law.

15] 40 Plaintiff shows the court that being conscious of the bias, prejudice, illwill, enmity which said Fred H Blume, then chief justice of the Wyoming supreme court, had and held toward plaintiff, and feeling that he could not receive a fair impartial hearing before the supreme court with said Justice Blume sitting on his case, this plaintiff courteously informed Judge Blume that he did not feel that the judge should sit in judgment on this case, but the said Blume refused to disqualify himself, or step aside, but sat in judgment and denied the Writ of Prohibition. The Pioneer Carissa Gold Mines Inc. was permitted over the protests of plaintiff to Intervene, and it set up the same void judgment in 50 Wyo 277 as grounds for denying the writ. Judge Blume, as judge, and Chief Justice, joined with a denial of the writ, and held the trespassing Pioneer Carissa Gold Mines Inc in possession of the property of Plaintiff and directed that the lower court in case 4561 sell the property of plaintiff. In the decision, the court this make this pronouncement which plaintiff interpreted as an intimidating threat, that if plaintiff should ever thereafter seek redress for the taking of his property without due process of law, or assert his denial of equal justice in regard thereto, he would be the object of drastic action by the court, towit: Case No 2757-Sept 18, 1956.

"Any further attempt to try to claim any ownership of the foregoing property is a grave abuse of judicial process"

This took away the legal right to even petition for rehearing.

Further the court decreed:

"We are constrained to hold that the relator is not the owner and has no right of possession of the property in

controversy. The Pioneer Carissa Gold Mines Inc is the owner and has the right of possession pursuant to the order of June 7, 1956 of the District Court of Fremont County, Wyoming- assuming a conveyance is or has been made as directed by that court. That the plea of res judicata on the part of respondents and intervenor must be sustained. That the relator is estopped to claim ownership or possession of the property in controversy. And the Writ for Prohibition must be denied."

41 Plaintiff shows the court that the action of the court in the above matter is void first for the bias, prejudice, ill-will, enmity of said Fred H Blume, chief justice presiding therein. Further that it is void for want of jurisdiction in the court to render the particular judgment it did; and is void for excess of jurisdiction to render the particular judgment it did. That the same is a deprivation of the Civil Rights of plaintiff guaranteed by the 14th Amendment to the constitution of the United States; and also the 5th Amendment to the constitution of the United States; and likewise contrary to the Bill of Rights of the Wyoming constitution, especially each of the following sections: Sec 2-6-7-8-9-20-32-33-34 of Art I of that constitution; and sec 3-907 Wyo stat 1945; and the final conclusive judgments of the District Court of Fremont County, Wyo in cases 4182- and 4823 therein; and the supreme court of Wyoming in 40 Wyo 524, and cases 1667 and 1776 of the supreme court. That the deprivation of said rights was under color of law by the above mentioned judgment of the supreme court of Wyoming, in said case No 2757, dated Sept 18, 1956, in said supreme court. And that it was the result of said conspiracy in which all and each of defendants herein took part during the accomplishment of the same.

16] That by reason of the second cause of action plaintiff has been denied the use and enjoymnet of his said properties aforesaid, and the right of possession thereto, and has been deprived of his civil rights as above set forth, under color of law by said judgments of the District Court of Fremont county, Wyoming in said cases 4561 and 7521, hereinbefore set up, and the decision of the supreme court in the Prohibit Case aforesaid, No 2757 of the supreme court, dated Sept 18 1956, and also thru case 50 277 of the supreme court of Wyoming on Oct 7, 1936 also hereinbefore set up, and has been denied the protection of his good name, liberty and freedom and civil rights as hereinbefore set up. As a result thereof plaintiff

has suffered damage in the sum and amount of Seven hundred fifty thousand ($750,000.) dollars as his actual damages.

Wherefore, the law and the premises considered, plaintiff prays judgment that he have and recover of and from defendants on his first cause of action the sum of Seven hundred fifty thousand ($750,000.) dollars as his actual damages; and other proper relief.

Wherefore the law and the premises considered plaintiff prays judgment that he have and recover of and from defendants on his second cause of action the sum of Seven hundred fifty thousand ($750,000.) dollars as his actual damages; and other proper relief.

Wherefore plaintiff prays judgment as part of each cause of action above set forth, that he have and recover of and from defendants and each of them, punitive or exemplary damages in the sum of Two hundred fifty thousand ($250,000.) dollars, to deter defendants and others like them from ever hereafter committing like wrongs, acts, and conduct against plaintiff or any other person or party similarily situated; and for the general good of society that every citizen may hereafter be safe and secure in his equal and constitutional rights to the equal protection of the law, and that none may hereafter be deprived of their life, liberty, or property without due process of law; and that every member of society may ever hereafter enjoy the security of the constitutional guaranties of the 14th and of the 5th Amendment to the constitution of the United States, and as well also the same security and protection under the Bill of Rights of the Wyoming Constitution of Wyoming, and the statues of the state. And for costs, and any other proper relief.

John J Spriggs Sr---Plaintiff

Filed November 20, 1956.

17] Motion To Dismiss Complaint.

The defendant Harry S. Harnsberger moves the Court to dismiss the complaint of the plaintiff because the complaint fails to state any claim against him upon which relief can

be granted.

James A. Greenwood
Bard Ferrall
Carleton A. Lathrop
Attorneys for Defendant
Harry S Harnsberger

Filed December 5, 1956.

[The language of the motions to dismiss the complaint, filed December 5, 1956, on behalf of Fred H. Blume, is substantially identical with that of the motion to dismiss the complaint filed on behalf of Harry S. Harnsberger.]

19] Motion.

The Defendant H. H. Hime moves the Court as follows:

I. To dismiss the action because the complaint fails to state a claim against this defendant upon which relief can be granted.

H. H. Hime

Arthur E. Oeland
Attorney for Defendant

Filed April 11, 1956.

[The language of the motion to dismiss filed December 8 and 12, 1956, on behalf of Pioneer Carissa Gold Mines, Inc., and George B. Colemere, and Spencer J. Lewis, is substantially identical with the motion to dismiss filed on behalf of H. H. Hime.]

22] Motion.

Comes Now W. J. Wehrli, heretofore having entered his appearance herein as attorney for the defendant Spencer J.

Lewis, and informs the Court that said defendant died on the 18th day of February, 1957, and moves the Court that an order be made and entered herein dismissing this case as to said defendant.

Dated this 10th day of April, 1957.

W. J. Wehrli

Filed April 11, 1957.

23] Order Of Dismissal As To Defendant Spencer J. Lewis.

At this day there is presented to the Court the motion of W. J. Wehrli, attorney herein for defendant Spencer J. Lewis, for dismissal of this case as to said defendant for the reason that he died on February 18, 1957, and the Court having considered the motion and being fully advised in the premises:

It Is Ordered by the Court that this case be, and the same is hereby, dismissed as to defendant Spencer J. Lewis.

Dated April 11, 1957.

Ewing T. Kerr
Judge

Filed April 11, 1956.

25] Order Ruling On Motions.

The above entitled action coming before the Court for hearing this 13th day of May, 1957, upon the motion of the complainant to vacate the order herein made dismissing the case as to Spencer J. Lewis and for substitution of Nell Grieve Lewis, Executrix of the Estate of Spencer J. Lewis, deceased; and upon the separate motions of the defendants that an order be made and entered herein dismissing this case as to each defendant on the ground and for the reason that the complaint fails to state a claim against each de-

fendant upon which relief can be granted; and the plaintiff being present and representing himself in person; and defendant Pioneer Carissa Gold Mines, Inc., a corporation, and George B Colemere being represented by W. A. Smith of Smith and Nicholas, their attorneys; and Harry H. Hime being represented by Arthur E. Oeland, his attorney; and Spencer J. Lewis, Deceased, and his Executrix being represented by W. J. Wehrli, his attorney; and defendants Fred H. Blume and Harry S. Harnsberger being represented by Bard Ferrall and Carleton A. Lathrop, their attorneys; and all parties having announced themselves ready for a hearing upon the motions above mentioned, the Court proceeded with such hearing.

26] Upon hearing the motion of plaintiff to vacate the order dismissing the case as to the defendant Spencer J. Lewis and to substitute Nell Grieve Lewis, Executrix of his Estate, as defendant herein, the Court finds that such order heretofore entered herein dismissing the case as to Spencer J. Lewis should be vacated and set aside.

Upon hearing the arguments of counsel upon the motions of the individual defendants that the case be dismissed for the reason that the complaint as to each defendant fails to state a claim upon which relief can be granted, the Court finds that the defendant Spencer J. Lewis and his personal representative and the defendant Fred H. Blume are immune from suit because the said Spencer J. Lewis, now deceased, and the said Fred H. Blume each occupied a judicial office; and as to the said defendant Spencer J. Lewis and his personal representative and the defendant Fred H. Blume, and as to all other defendants, the Court finds that the separate motions to dismiss on the ground that the complaint fails to state a claim upon which relief can be granted should be sustained. And the Court further finds that the prosecution of this case is an attempt to relitigate questions previously litigated in this and other courts of record and upon which final judgments have been entered. The Court further finds that as to the defendant Spencer J. Lewis any cause of action attempted to be set forth in plaintiff's complaint does not survive and that as to such defendant and his personal representative this action should be dismissed on account of the death of the said defendant.

And the plaintiff, after the announcement of the ruling of the Court, having announced in open Court that he desired

to amend the complaint, the Court finds that because of the immunity from suit enjoyed by the decedent Spencer J. Lewis and Fred H. Blume that the complaint cannot be amended
27] in any way as to either said Spencer J. Lewis or his representative or the said Fred H. Blume, but that the Court ought to grant the plaintiff fifteen days from the date of this order in which to submit to the Court an amended complaint as to the remaining defendants if plaintiff desires so to do, and when such amended complaint is submitted, the Court will then determine whether same can be filed or not.

Wherefore, It Is Hereby Ordered That the above entitled action be and the same hereby is dismissed as to all defendants.

It Is Further Ordered That plaintiff, as to the defendants other than Spencer J. Lewis and his Executrix and Fred H. Blume, may submit to the Court for filing an amended complaint within fifteen days from date of this order, and upon such submission the Court shall determine whether or not same may be filed.

To all of which the plaintiff objects and excepts and saves an exception thereto.

Done in open Court this 13th day of May, 1957.

Ewing T. Kerr
Judge

Filed May 13, 1957.

28] Notice Of Appeal To The Court Of Appeals For The Tenth Circuit Under Rule 73 b.

Notice is hereby given that John J Spriggs Sr, plaintiff above named, hereby appeals to the United States Court of Appeals for the Tenth Circuit, from the order of the Court upon the separate motions of defendants, of each of said defendants, Spencer J. Lewis and his executrix, and Fred H Blume, that the case be dismissed as to each of said defendants for the reason that the Complaint fails to state a claim upon which relief can be granted as to each of said defendants;

and for the reason that said Spencer J Lewis and Fred H Blume, are because of their judicial capacities, immune from suit in said case; and further that Spencer J Lewis being deceased the cause of action is not one that survives his death and against his executrix. And further ordering that the Complaint cannot be amended as to each of said defendants. And further the order of the Court sustaining the separate motion of each of the other defendants because the Complaint does not state a claim upon which relief can be granted as to each of said separate defendants, and dismissing the action as to each of said other defendants. And further the order of the court that plaintiff can only amend the Complaint as to each of said other defendants by first submitting his amended Complaint to the Court, upon the submission of which the court shall determine whether or not the complaint as so amended can be filed, all as appears in the order of the court entered in said case on May 13, 1957.

Dated May 17, 1957

John J Spriggs Sr-Plaintiff

Filed May 21, 1957.

[An appeal bond was filed May 21, 1957.]

71] Order Denying Plaintiff The Right To File Amended Complaint.

The Court having carefully considered the allegations contained in the amended complaint presented to this court for filing pursuant to an order of this Court entered May 13, 1957, and the Court being fully advised in the premises doth find:

That on May 13, 1957, this Court made and entered an order sustaining motions to dismiss the original complaint for the reason that said complaint failed to state a claim against the defendants upon which relief could be granted;

The Court doth further find that said order provided that the said plaintiff might submit to this Court an amended complaint within fifteen days from the date of said order as

to certain defendants and after an examination of said amended complaint the Court would then and there determine whether said amended complaint should be filed;

The Court doth further find that the allegations contained in said amended complaint are in substance the same as alleged in the original complaint;

The Court doth further find that the federal question which plaintiff seeks to raise fails in substance and as shown by the allegations of the proposed amended complaint fails to exist; neither does said amended complaint show upon its face that plaintiff's rights under the Federal Constitution have been violated, either by depriving him of his property without due process of law or denying him the equal protection of the law;

72] The Court doth further find that the amended complaint shows upon its face that plaintiff regularly invoked the jurisdiction of the State Courts, where the cases were tried and were fully and finally adjudicated and that the State Courts had jurisdiction over said cases;

The Court doth further find that neither the Fourteenth Amendment to the Federal Constitution or the Civil Rights Acts enacted thereunder permit the relitigation of matters in the United States District Court after the same have been adjudicated in State Courts of competent jurisdiction. It is therefore

Ordered that plaintiff be denied the right of filing his amended complaint for the reason that said proposed amended complaint fails to state a claim against the defendants upon which relief can be granted.

Plaintiff is allowed an exception to this order and ruling.

Dated May 28, 1957.

Ewing T. Kerr
Judge

Filed May 28, 1957.

76] **Notice Of Appeal To The Court Of Appeals Of The Tenth Circuit Under Rule 73 B.**

Notice is hereby given that John J Spriggs Sr, plaintiff above named hereby appeals to the United States Court of Appeals for the Tenth Circuit from the order of the Court sustaining the separate motions of each defendant that the case be dismissed for the reason that the Complaint fails to state a claim against each separate defendant upon which relief can be granted as to each separate defendant; and for the further reason stated in the order that as to Spencer J Lewis, and Fred H Blume the case should be dismissed because each of said two defendants are, by reason of their judicial capacities immune from suit herein, and denying plaintiff the right to amend his complaint as to each of said defendants; and further, that as to Spencer J Lewis, by Nell Grieve Lewis, his executrix, the case should be dismissed because the cause of action does not survive his death. And further from the order sustaining the separate motions as to each of the other defendants for the reason the Complaint fails to state a claim upon which relief can be granted as to each of said other defendants, and dismissing the action as to each of said defendants, And appeals from the further order of the court denying plaintiff the right to amend his complaint only by first submitting to the court the proposed amendment of the complaint, whereupon the court will then determined whether the court will permit plaintiff to amend his Complaint, all as appears in the order of Court entered in said case on May 13, 1957. And plaintiff further appeals from the subsequent order of the court entered in said case May 28, 1957, wherein the court denied plaintiff the right to amend his Complaint against each of said defendants for the reason that the amended Complaint fails to state facts and a claim upon which relief can be granted as against each of said defendants, all as appears in said subsequent order of May 28, 1957 entered in said case.

Dated this May 31, 1957.

John J Spriggs Sr-Plaintiff

Filed June 3, 1957.

[An appeal bond was filed June 3, 1957.]

Spriggs vs. Pioneer Carissa Gold Mines, Inc. et al.

81] Designation Of Points Relied On For Appeal.

Plaintiff having appealed to the United States Court of Appeals, Tenth Circuit from the order of the court herein dated May 13, 1957 and the order of the court herein dated May 28, 1957, designates the points relied on by him in the appeal, to-wit:

1. The court erred in its order of May 13, 1957, sustaining the separate motions of each defendant to dismiss the complaint and case for the reason stated in each separate motion that the complaint did not state a claim on which relief could be granted and dismissing the case as to each separate defendant, all as appears in said order.

2. The court erred in its said order of May 13, 1957, dismissing the action as to each of defendants Spencer J Lewis and his personal representative, and Fred H Blume, and denying plaintiff the right to file an amended complaint as to either of said two defendants for the reason stated in the order that by reason of their holding a judicial office they were each immune from suit herein. And the further reason as to Spencer J Lewis that by reason of his death, the action did not survive his death.

3. The court erred in its order of May 13, 1957 in sustaining the separate motions of each of the remaining separate defendants to dismiss the case as to each of them because the complaint did not state a claim on which relief could be granted as against each separate defendant, and in dismissing the action as to each separate other defendant—all as appears in said order, of May 13, 1957

4. The court erred in its order of May 13, 1957 in denying plaintiff the right to file an amended complaint against each of the other remaining defendants as secured to him by Rule 15 a; and in imposing on plaintiff the requirement that plaintiff must first submit his amended complaint to the court, whereupon the court will then determine whether the amended complaint can be filed—all as appears in said order.

5. The court erred in its order of May 28, 1957 denying plaintiff the right to amend his complaint, and to file the amended complaint, and dismissing the action as to each

defendant, all as appears in said order of May 28, 1957, and for the reasons set forth in the order.

John J Spriggs Sr-Plaintiff

Filed June 12, 1957.

82] Clerk's Certificate.

United States of America.)
) SS.
District of Wyoming,)

I, Capitola G. Allison, Clerk of the United States District Court for the District of Wyoming, do hereby certify that the above and foregoing papers and proceedings, attached to this certificate, are original papers and proceedings contained in the record in said Court in Case No. 4951 Civil, John J. Spriggs, Sr., Plaintiff, vs. Pioneer Carissa Gold Mines, Inc., a corporation, and George B. Colesere, Harry H. Hine, Spencer J. Lewis, Fred H. Blume and Harry S. Harnsberger, Defendants, as follows:

Complaint, filed on November 29, 1956. Motion of defendant Harry S. Harnsberger to dismiss Complaint, filed on December 5, 1956. Motion of defendant Fred H. Blume to dismiss Complaint, filed on December 5, 1956. Motion of defendant Harry H. Hine to dismiss action, filed on December 7, 1956. Motion of defendants Pioneer Carissa Gold Mines, Inc., and George B. Colesere to dismiss action, filed on December 8, 1956. Separate Motion of defendant Spencer J. Lewis to dismiss case, filed on December 12, 1956. Motion for dismissal as to defendant Spencer J. Lewis, filed on April 11, 1957. Order of Dismissal as to defendant Spencer J. Lewis, entered and filed on April 11, 1957. Demand for Jury, filed on May 3, 1957. Order Ruling on Motions, entered and filed on May 13, 1957. Notice of Appeal, filed on May 21, 1957. Cost Bond on Appeal, filed on May 21, 1957. Amended Complaint, received on May 27, 1957. Order Denying Plaintiff the Right to File Amended Complaint, entered and filed on May 28, 1957. Designation of Record for Appeal, filed on May 28, 1957. Designation by defendant Spencer J. Lewis and his Statement of additional Papers to be Included in Record on Appeal, filed on May 31, 1957. Notice of Appeal,

filed on June 3, 1957. Cost Bond on Appeal, filed on June 3, 1957. Designation of Record on Appeal, filed on June 3, 1957. Designation of Points Relied on for Appeal, filed on June 12, 1957.

I further certify that said original record is herewith transmitted to the United States Court of Appeals for the Tenth Circuit pursuant to the Notices of Appeal and Designations of Record on Appeal filed in the above entitled cause by appellant, John J. Spriggs, Sr., and to the Designation of Additional Papers to be Included in Record on Appeal filed on behalf of Appellee Spencer J. Lewis and his Executrix, in said cause.

83] Witness my hand and the seal of said Court on the 25th day of June, A. D. 1957, at Cheyenne, Wyoming.

Capitola G. Allison
Clerk of the U. S. District Court
for the District of Wyoming.

(Seal)

Filed United States Court of Appeals, Tenth Circuit, June 26, 1957, Robert B. Cartwright, Clerk.

SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
MAR 20 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term 1957

No. 864

JOHN J. SPRIGGS, SR., *Petitioner*

v.

PIONEER CARISSA GOLD MINES, INC., a Corporation, and GEORGE B. COLEMERE, HARRY H. HIME, SPENCER J. LEWIS, FRED H. BLUME and HARRY S. HARNSBERGER, *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOHN J. SPRIGGS, SR.,
Petitioner and Attorney for Petitioner, Pro Se
671 Main Street,
Lander, Wyoming.

JOHN J. SPRIGGS, JR.,
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In The

Supreme Court of the United States

October Term 1957

No.

JOHN J. SPRIGGS, SR., *Petitioner*

v.

PIONEER CARISSA GOLD MINES, INC., a Corporation, and GEORGE B. COLEMERE, HARRY H. HIME, SPENCER J. LEWIS, FRED H. BLUME and HARRY S. HARNSBERGER, *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Earl Warren, Chief Justice of the United States Supreme Court, and to the Honorable Associate Justices of the Supreme Court of the United States:

John J. Spriggs Sr., petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the tenth Circuit rendered on the 20th day of December, 1957. (—— Fed 2'd ——).

The United States Court of Appeals for the tenth circuit affirmed two orders and judgments of the District Court of the United States for the District of Wyoming, dismissing the action of your petitioner, plaintiff therein.

JURISDICTION

The judgment of the United States Court of Appeals for the tenth district was entered December 20, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

THE QUESTIONS PRESENTED

Petitioner presents to this court the question of whether the Court of Appeals was in error in afirming the orders and judgment of the District Court below dismissing the action of plaintiff. The specific questions of law here presented may be stated as follows: Does the Complaint in the present action state a claim upon which relief can be granted against defendants, or either of them under the Civil Rights Act? These questions can only be answered by correctly determining:

a) Did the Court of Appeals err in affirming the order of the District Court below dated May 13, 1957 (R 25-pg 24-25-26) and each separate provision of the order, namely:

1-Affirming that provision of the order that adjudged that defendant Judge Spenc[illegible] J Lewis, and defendant Fred H Blume were each immune from suit by reason of having acted in their respective judicial capacities?—which is to say; Are members of the state judiciary acting in their judicial capacity immune from civil action in federal courts for violation of citizens rights under the Constitution and laws of the United States, particularly the Civil Rights Act now embodied in 42 U S C A Sec 1983-1985 1986, 1988, 1954 Supp ? And are they so immune when acting wilfully, maliciously, with the designed evil and purposeful intent to discriminate against plaintiff as charged in the Complaint, and admitted and confessed in the record herein?

2) Affirming that provision of the order that denied plaintiff the right to amend his Complaint under Rule

15a as to defendants Judge Lewis and Judge Blume; And further denying plaintiff the right to amend his Complaint as to the remaining defendants except under the restriction that plaintiff must first submit his proposed amended Complaint to the Court who would then determine if it could be filed?

3) Affirming that provision of the order that adjudged that the action abated and did not survive the death of Judge Lewis as to that defendant?

4) Affirming that provision of the order that adjudged the Complaint failed to state a claim on which relief could be granted as to all defendants?

b) Did the Court of Appeals err in affirming the order of the District Court below dated May 28, 1957 (R 71-pg 27-28) which denied plaintiff the right to file his amended Complaint?

c) Did the Court of Appeals err in sustaining the above orders of the District Court below denying plaintiff the right to amend his Complaint under Rule 15 a—no responsive pleading having been filed by any defendant? And further denying plaintiff the equal protection of law under Rule 8 c and 12 h?—which is to say; Is it err to deny plaintiff the equal protection and benefit of the aforesaid Federal Rules of Civil Procedure on an equality with every other citizen and litigant in the federal courts?

SUMMARY STATEMENT OF MATTERS INVOLVED

The United States District Court for the District of Wyoming, by two separate orders and judgments, the First dated May 13, 1957 (R 25-pg 24-5-6) sustained separate motions of each respective defendant, dismissing the action as to each and all defendants for failure to state a claim upon which relief could be granted, which first order denied plaintiff to amend his complaint under Rule

15a of RFCP. (For Rule 15a See Appendix pg) The motions of defendants Harry H Harnsberger (R 17-pg 22) and Fred H Blume (R 23), asked only dismissal of the Complaint. A dismissal of the Complaint does not dismiss the action, but leaves the action pending for amendment. The court went beyond the motions and granted relief not asked (R 25-pg 24-5-6). The other motions asked dismissal of the action (R 19-pg 23) which the court did (R 25-pg 24-5-6) The District Court—SUA SPONTE—interposed and favorably adjudged for defendants Judges Blume and Lewis a defense of judicial immunity as acting in their judicial capacities. and denied plaintiff the right to amend his complaint as to them (R 25-pg 24-5-6) As to defendant Lewis, the order adjudged the action had abated with his death (R 26, pg 25) The order dismissed the action as to all defendants, denied plaintiff the right to amend his complaint, but provided plaintiff might submit any proposed complaint as to the remaining defendants, whereupon the court would then determine if it could be filed. This was a denial of equal legal, procedural, and absolute rights under Rule 15 a (For order see R 26-pg 24-5-6) Plaintiff submitted his proposed amended complaint but by order of May 28, 1957 (R 71-pg 27-8) -plaintiff was denied the right to file such amended complaint. The order was a denial of equal rights of plaintiff under Rule 15a.

Plaintiff gave timely Notice of Appeal from both orders, and filed cost bond, and appealed from each order and each separate provision thereof. (R 28, pg 26-7) R 76-pg 29) and from the discriminatory action of the U S District Court in denying plaintiff the equal protection of the law under the Federal Rules of Civil Procedure.

The Court of Appeals affirmed the orders of the District Court dismissing the action, but refused to adjudge on the particular assignments of errors, namely: judicial immunity of defendants Lewis and Blume; abatement

of action by death of Lewis; denial of protection of Rules 15a, and 8c and 12 h; or to take notice of, discuss or adjudicate on the vital and essential allegations of the complaint constituting a claim against defendants.

On defendants' motions to dismiss for failure to state a claim on which relief could be granted, the sole question before the District Court, and the Court of Appeals is: "Taking the complaint as true, with every material allegation, and every reasonable inference to be drawn therefrom, as true and confessed, when viewed in the light most favorable to plaintiff, does the complaint state a claim, under any theory of law, whether or not the pleader has misconceived the proper method of stating his claim, does the complaint state a claim upon which relief can be granted"?

The court will not test the complaint as to whether or not it states a cause of action, as against the scope of the statutory word CLAIM, or concern itself as to the extreme difficulty of amending the complaint.

The defendants filed no motion for summary judgment. Had they filed such motion, the same would require supporting affidavits, setting up the essential allegations of pleading in prior litigations, and the particular and essential point determined as necessary to the particular judgment, and upon which the judgment must rest. This would includude allegations showing jurisdiction in the court, with jurisdiction of the parties, and the subject matter, and with the now third essential of jurisdiction of the court to render the particular judgment it did. Upon such motion, and showing, the plaintiff can file a counter-affidavit, setting up facts showing a lack of jurisdiction, lack of identiy of parties, or privies, lack of identiy of the particular essential issue, or of parties, or of new title since acquired, with any other like material matter. This provides a hearing, in open court, and if there is any issuable fact to be determined, the motion for sum-

mary judgment must fail. The Court of Appeals had no such basis upon which to base its decision that the Civil Rights of plaintiff had been adjudicated in the cases relied on. The record herein would require judgment for plaintiff without question.

The only pleading before the court herein, is the complaint. All material allegations, and all reasonable inferences are taken as true, admitted and confessed. The complaint, par 4-19, pg 4-12 set up the final, absolute, res judicata, conclusive judgments of cases 4182-4623 of the District Court of Fremont County, Wyoming, and of the Supreme Court of Wyoming on appeal thereon, in 40 Wyo 524, cases 1667, and 1676 of the same Supreme Court, all courts of competent jurisdiction, with full and complete jurisdiction of the subject matter, the parties, and with jurisdiction to render the particular judgment which they did, namely full and complete jurisdiction to establish the First Trust, decree sale to satisfy the First Trust, and the judicial sale under the Supreme Court mandate aforesaid to satisfy the First Trust, with the adverse parties filing a Written Waiver of Right to Appeal, directing the court to make the judgment final, absolute, conclusive, all of which was done. The making of the sale and deed to one Tibbals, confirmation of sale, by direction of all parties, including the subsequent Midwest lessee, and its privy, and ratification by the alleged receiver of the Midwest lessee. It set up the deed from purchaser Tibbals to plaintiff. It set up Sec 3-907 Wyo Stat. 1945 excluding acquisition of any adverse rights against Tibbals after March 17, 1928, date of serving summons in case 4182, the suit to establish and foreclose the First Trust (Par 4 to 13-pg 4 to 9 R) It set up in support of said Sec 3-907 Wyo Stat-45, the universally established law as declared by the Supreme Court of the United States, and the Federal Courts, and different State Supreme Courts, and especially the Supreme Court of Wyoming (See record, par 4-5, page 4-5 which gave the

District Court and the Wyoming Supreme Court in 40 Wyo 524, the sole, prior, exclusive jurisdiction, custody and control of the properties involved, which are the same properties the possession, use, control and enjoyment of which was denied plaintiff by defendants. It alleges total lack of jurisdiction of the subsequent collateral court in case 50 Wyo 277 (R par 12 to 20, pg 8 to 12). It alleges that while plaintiff Tibbals was up in the Supreme Court litigating his First Trust, the same identical defendants, as owners of the properties, gave a 4 year lease, from Oct 10, 1928 to Oct 10, 1932 to Midwest Mining Corporation, the subsequent lessee; That the subsequent lessee became insolvent. A creditor Marrin, on Nov 3 1930—which was 2 years and over 7 months after March 17, 1928, the date of summons in case 4182 to foreclose the First Trust, filed suit to collect $901.25 for wages against the Midwest Mines Corporation (R par 13, pg 9) and the court appointed a receiver for the insolvent lessee. It set up that the RES of the receivership was the property of the lessee, its mining equipment; and any unexpired term of the lease, but that it did not include the fee simple title of the owners, the lessors (R par 20, pg 12) That on final judgment the court in case 4623, acting under the prior mandate of the Supreme Court, 40 Wyo 524, did specifically adjudge that the receiver had no claims to the properties of the owners, or against Tibbals (R par 14 to 18-pg 9-12). It alleges that thereafter, the receiver, was by order of the court in the receivership case, 4561, TO CLOSE THE RECEIVERSHIP, ordered to sell all property in receivership, specifically listing the RES as the mining equipment, and the 6 weeks unexpired term of the lease. That this was done, Sept 1-1938 all the RES was bought in by creditors, in full satisfaction of all debts whatsoever of the insolvent Midwest lesse, all receivership costs, charges and demands whatsoever. And that conveyance was made therefor. And that the lease expired by its own limitations on Oct 10, 1932. (R Par

19-20, pg 12-13) That plaintiff Marrin died July 1943, there was no revivor, and there has been no plaintiff in case 4561 since that date. (R par 13, pg 9) and the franchise of Midwest Mines Corporation, a foreign corporation, was forfeited in 1933. (R par 13, pg 9). The petition sets up a deed from Tibbals to plaintiff, Mch, 3,1933 of an 11/24 interest in the properties. R pg 2) (R par 21, pg 13) The complaint alleges that on March 3, 1933, defendant Graham, pretending to act as receiver of the subsequent, privy, actual party, Midwest lesse, entered upon and into the properties, and that the owners, plaintiff and Tibbals brought suit 4871, which is 50 Wyo 277 to oust the trespasser. (R par 9, pg 13) That defendant Fred H Blume was Supreme Judge acting in case 50 Wyo 277, the defendant Harry S Harsnberger, was attorney for the alleged receiver and was trying to get possession of plaintiff's property; that said defendant Harnsberger, in conspiracy with alleged receiver Graham, and Judge Blume and others conspired to deprive plaintiff of his property without due process of law, and to deny him the equal protection of the law, and to deny him the equal protection of the final res judicata, conclusive judgments of the District Court of Fremont County, Wyo, in cases 4182-and the ancillary case, 4623 therein, and of the Supreme Court of Wyoming in case 40, Wyo 524, and cases 1667 and 1676 of the Supreme Court, and 5th and the 14th Amendments to the constitution of the United States, and the Bill of Rights of the Wyoming Constitution, particularly, Sec 2-6-7-8-9-20-32-33-34 of Art I of the Wyoming constitution; and sec 3-907 Wyo Stat 1945; and in conflict with tnd discriminatory against plaintiff, as further established by the universal law of the land as decreed by the Supreme Court of the United States, the Federal courts, the different State Supreme Courts, including the Supreme Court of Wyoming, and as required by Sec 3-907 Wyo Stat, 1945. (R par 22-23-24-25, pg 13-14) The complaint al-

leged facts showing a total lack of jurisdiction in both the District Court of Fremont County, Wyo in case 4871, which was 50 Wyo 277 on appeal in the Supreme Court to relitigae, annul, and set aside the final conclusive judgments of the same courts in prior cases—4182-4623, 40 Wyo 524, cases 1667 and 1676 of the Wyoming Supreme Court, or the final sale and deed and confirmation of sale and deed of the fee simple properties to Tibbals on Oct 15, 1932. The complaint alleged that, under color of law, defendants had by conspiratorial action, with the evil and purposeful intent to discriminate against plaintiff and deprive him of his property, and the use and enjoyment thereof and to deprive him of his rights thereto in violation of the 5th and 14th amended to the constitution of the United States, and the Bill of Rights of the Wyoming Constitution, and sec 3-907 taken from plaintiff those rights, in violation of the Civil Rights Act of Congress, 42 USCA, sec 1983-1985-1986-1988, and had actually acomplished their purpose, to the great damage of plaintiff. The complaint further alleged facts as the prompting motives actuating defendants, namely that plaintiff was at that time a candidate for Supreme Judge, which aroused the wrath of Judge Blume and other conspirators, including alleged receiver Graham, and defendant Harnsberger, attorney, who were striving to get possession of the property of plaintiff and deprive him of the same, and that in its official opinion Judge Blume and the Supreme Court, actuated by bias, prejudice, ill will and hatred, went out side the record, inserted in the court opinion matters accepted and published by the press as answering the campaign adds of plaintiff, and rendered a totally void judgment, which the court had no jurisdiction to do, relitigating collaterally and annuling the prior final, res-judicata, conclusive judgments of same courts in the prior cases. That such action and judgment was totally void, without jurisdiction, a complete nullity and conveyed no rights of possession,

use, enjoyment or title to the alleged receiver and constituted no defense to any defendant herein. That such void judgment was the same as no judgment, and left the defendants in the same position as if no judgment at all had been rendered therein, and constituted no defense to plaintiff's action. The complaint alleges that plaintiffs therein filed petition for rehearing, setting up the voidness of the judgment in 50 Wyo 277, and the bias and prejudice of the court, and the publication by the press as an answer to plaintiff's campaign adds, and that thereby plaintiff were denied their property without due process of law, with a request that Judge Blume and fellow-judges call in other judges to pass on the petition for rehearing. That defendant Harnsberger suggested to the court that it was contempt to charge the judges with bias and prejudice, and that Judge Blume caused an order to be made directing Attorney Harnsberger to appear as FRIEND OF THE Court and prosecute the contempt matter, which was done. That this was in punishment and reprisal against plaintiff, and to compel him to submit to a void judgment which took his property without due process of law, and denied plaintiff the equal protection of the law as guaranteed in the 5th and 14th Amendments to the U S Constitution (R par 25-pg ;4-15) The complaint alleged that when the judge came up for re-election, plaintiff became a candidate against him. That he wrote a letter to the lawyers exposing the errors of the court, and for this, he was prosecuted as unfit to practice law. That Judge Blume caused the same judge who rendered the opinion in case 50 Wyo 277 to sit in judgment on plaintiff in this action, and that thereby, under this conduct, repulsive to American concept of right and justice, the plaintiff was suspended from practice, his means of livelihood taken away, his good name and reputation blasted with damages. That this was in reprisal and punishment of plaintiff for further protesting the taking of his property without due process

of law in 50 Wyo 277. The complaint alleged the conspiracy of defendants was a continuing conspiracy, and was continuing to this day. The second cause of action set up facts showing the conspiracy, and the actual denial of property without due process of law, and the denial of equal protection of law as continuing, and continuing denial of the use, possession and enjoyment of plaintiff to his property, and the further final divestment of title thereto, by the issuing of a receiver's deed to defendant Pioneer Carissa Gold Mines Inc. (R par 36 to 41-pg 17-31) and dividing up the proceeds, between defendant Harnsberger, defendant Hime, alleged receiver, the widow of prior receiver Graham, and the widow of the prior receiver's attorney, and the attorney for present receiver Hime. The second cause of action set up a new title in plaintiff not existent in 50 Wyo 277, and the Federal court in 172 F 2nd 449. The complaint alleges Feb 20, 1950 plaintiff acquired deed from Federal Gold Mining Company and Executors of the Spry estate for the properties (R par 1-pg 3) Paragraphs 29-30-31-32 (R pg 16)—for some reason not appearing and for which plaintiff cannot account—perhaps some reason of inadvertance, but which could be corrected by amendment,—were omitted from the printed Transcript. However therein plaintiff alleged that in order to satisfy and appease the court, he had in Feb 1950, purchased from Federal Gold Mining Company and the Executors of the Spry estate, the defendants in cases 4182-4623, 40 Wyo 524, the title of record. This was a step taken because the court had adjudged the sale to Tibbals to be void, and stubbornly refused to correct the error. Then if the sale should ARGUENDO be taken as invalid, then the title remained in the owners. If plaintiff acquired the owners' title, then plaintiff would be entitled to the possession, use, enjoyment and full title to the properties and the court could have no reason thereafter to deny plaintiff such full right. The court had already finally adjudged the receiver to

have no claim whatsoever to the properties (R par 12-13-14-15-16-17-18-19-19 et seq, pg 8 to 12) And under sec 3-907 Wyo Stat-45, and the universally established law, that was true. The same paragraphs alleged that in the meantime, Attorney Harnsberger had been appointed Supreme Court Judge, and that he was forbidden by Sec 25, Art V of the Wyoming Constitution, and also by Sec 1-112 of the Wyo Statutes-45, from practicing law, or giving advice and counsel to any parties. That plaintiff having acquired this new title, then filed case 7521 in the District Court of Fremont County to oust the Pioneer Carissa Gold Mines Inc, defendant who claimed to hold under an option from Graham, negotiated by defendant Harnsberger. That under this void lease, the Pioneer Carissa Gold mines Inc, with George B Colemere as its chief controlling officer, had depleted the plaintiff's property by taking out over $70,000. in mineral ores. That conspiring with Pioneer Carissa Gold Mines, and Colemere its Chief officer, defendant Harnsberger, while such Supreme Court Judge, in violation of the constitutional, and statutory inhibitions against him as such judge, did appear as attorney in case 7521, and filed an answer for Pioneer Carissa Gold Mines, and set up as a defense, the void leases, and the void judgment in case 50 Wyo 277. To this void answer, plaintiff filed a motion to strike the answer from the files as an illegal pleading. (R par 33, pg 16) but Judge Lewis denied the motion. That plaintiff then demurred to the answer for the same reason which Judge Lewis overruled. That thereby plaintiff was denied the equal protection of the law, and equal rights, privileges, and immunities under the law, in that he was compelled to cope with the influence of a Supreme Court Judge, acting as attorney. That on trial, Judge Lewis refused to oust the trespassers and held them in possession of his property. The complaint alleges an appeal by plaintiff to the Supreme Court, Judge Blume presiding, denied the appeal (R-par 35-pg 17) The complaint

alleges that at this time, plaintiff was again a candidate for supreme court justice opposing Judge Blume, and was exposing the error of the Supreme Court in 50 Wyo 277 as a taking of his property without due process of law, and as a denial of equal protection of the law. The complaint alleges that during this time plaintiff met Judge Blume at the Wyoming State Bar meetin, approached him, extended his hand with a cordial greeting; How do do Judge? but Judge Blume refused to speak to plaintiff or take his hand (R par 35-pg 17) That Judge Blume then sat on plaintiff's appeal in case 7521 denied the appeal. That in this Judge Blume was actuated by bias, prejudice, hatred and illwill, and his judgment was for this reason alone void. The complaint does not allege, but the evidence would show, that in the meantime, the Attorney Stanton, set up in par 35, pg 17, became a District Judge, and Judge Blume called him in to sit as Judge, along with Judge Blume, on the Prohibition case. The complaint alleged that plaintiff applied for reinstatement of his appeal under Rules of Court, setting up that plaintiff was being denied the equal protection of the law, and his property was being taken without due process of law, but Judge Blume denied reinstatement, and in this he was actuated by the same bias, prejudice, hatred and ill-will. The complaint then alleges that on June 9, 1954, Judge Lewis sat as Judge in case 4561, but neither plaintiff nor Tibbals were parties to this action. (R par 36, pg 17) That he made an order allowing defendant Hime, alleged receiver, a fee of $1400. and a fee of $1000. to his attorney, and directed that it be paid from a sale of plaintiff's property.

Further the complaint alleges that on April 22, 1955, defendant Harnsberger, then a Supreme Court Judge, filed in case 4561 a claim for services in the amount of $15,000 and some more for costs. That he set up as basis for his claim his services in negotiating the leases from receivers Graham and Hime, to Pioneer Carissa Gold Mines Inc;

he set up services to the receiver as attorney in case 50 Wyo 277; and his services as prosecuting plaintiff in the contempt case; and like services to the receiver. That as Supreme Court Judge, as claimant, he appeared in open court and presented his claim, pro se; that he was greeted by Judge Lewis as MR JUSTICE HARNSBERGER; and claimant was allowed the special, discriminatory favor proving his case and claim by his open statement without being sworn; and Judge Lewis allowed him a fee of $7,500. plus $1500. extras as costs, and directed the receiver to sell to Pioneer Carissa Gold Mines, all of plaintiff's property and pay the claim out of the proceeds; That Judge Lewis then made further orders in case 4561 allowing the widow of prior receiver Graham a fee of $15,000. plus more for costs; and allowing the widow of the prior attorney for the receiver an extra fee of $7,500, plus $543, as costs; and a further order allowing defendant Hime, alleged receiver, $750. more and the attorney of Hime $400. more, with further allowance afterwards; and directed the alleged receiver Hime to sell plaintiff's property to Pioneer Carissa Gold Mines, and execute a deed therefor, and pay all of the above illegal allowances out of the proceeds of the sale, all of which was done (R par 38 pg 19) Defendant George B Colemere was in these proceedings chief officer and manager of Pioneer Carissa Gold Mines, and conspired with the other defendants to deprive plaintiff of his property without due process of law and to deny him the equal protection of the law, and accomplished the same. That Judge Lewis and the court was without jurisdiction to make said order, or sell plaintiff's property, and all his acts and orders were totally void. (R par 39-pg 19).

The complaint further alleges that in July 1956, plaintiff made application to the Supreme Court, Judge Blume presiding, for a Writ of Prohibition, asking that Judge Lewis and the court in case 4561 be prohibited from holding the alleged receiver and Pioneer Carissa Gold Mines

in possession of plaintiff's property or from selling and issuing a deed thereto to Pioneer Carissa Gold Mines, as Judge Lewis had ordered, setting up the total lack of jurisdiction in Judge Lewis and the court, the voidness of his orders, and showing the court that plaintiff was being denied his property without due process of law, and was denied the equal protection of the law (R par 39, pg 19). The complaint alleges that being conscious of the bias, prejudice, enmity and hatred that Judge Blume held toward plaintiff, he informed Judge Blume that plaintiff believed he could not get a fair hearing before the court with Judge Blume presiding, and courteously asked Judge Blume to disqualify himself but Judge Blume refused to do so, sat in judgment and denied the Writ of Prohibition. That over the protest of plaintiff Judge Blume permitted the defendant Pioneer Carissa Gold Mines to appear, and it set up the void judgment in 50 Wyo 277, and the leases between the receivers Graham, and Hime as a defense. He also called in to sit as Judge with Judge Blume, the Attorney Stanton mentioned in par 35 pg 17, who had just prior to the hearing been appointed a District Judge. That the court denied the Application for Prohibition, and in its judgment went beyond its proper duty and decreed: "Any attempt further to try to claim ownership of the foregoing property is a grave abuse of judicial process "which was meant as and taken by plaintiff as an intimidating threat that unless plaintiff bowed to the arbitrary and void acts of the Court which so took his property without due process of law, he would suffer drastic action from the court. The court, Judge Blume presiding, further declared that plaintiff was not the owner of, or entitled to possession of the properties, but that Pioneer Carissa Gold Mines was such owner.

It was the constitutional and legal duty of Judge Blume and the court to grant Prohibition, and restrain Judge Lewis from holding the trespassers in possession of plaintiff's property and from selling the same.

Failure to do so was an abuse and misuse of judicial power, so done wilfully, maliciously and with the evil intent to purposely discriminate against plaintiff, deny him the equal protection of law, and take his property without due process of law contrary to the federal guaranties of the 5th and 14th Amendments to the U S Constitution, and the Bill of Rights and statutes of Wyoming, and the universally established law of the entire land, and in violation of the Civil Rights Acts of Congress set up in the complaint. The court passed over without notice or comment, or consideration the new title acquired under the deeds of Feb 20, 1950. This new title did not exist in 50 Wyo 277, and was not a matter at issue or adjudicated therein, and could not be cited as res judicata. The Court of Appeals commited the same error.

Under the established law of this Supreme Court, and of the federal courts, declaring that under the Motions to Dismiss, all material well-pleaded allegation, and all reasonable inferences, when viewed in the light most favorable to plaintiff, are taken as true and confessed, the Complaint did state a perfect claim against all defendants on which relief could be granted.

To summarize thus far, the complaint set up a confessed denial of his equal rights privilege and immunities in the following particulars, towit:

1 A denial of the equal protection of the final, res judicata, Conclusive judgments of the District Court of Fremont County, Wyoming, in cases 4182- and 4623; and of the Wyoming Supreme Court in 40 Wyo 524, and cases 1667 and 1676 of the Supreme Court, those being courts of unquestioned competent jurisdiction over the parties, over the subject matter, and with complete, prior, exclusive jurisdiction over the properties, their custody and control, and with full and complete jurisdiction to render the particular judgment therein rendered, including the jurisdiction to establish the FIRST TRUST in favor of

Tibbals, and to decree sale of the properties to satisfy that FIRST TRUST, and with full prior exclusive jurisdiction to enforce the judgments by sale, deed, and confirmation of sale and deed to Tibbals, all of which was done.

2 That the final judgments therein were final, res judicata, and CONCLUSIVE thereafter on the parties, and privies, and no court, in any subsequent collateral case, such as case 4561, or 50 Wyo 277, or any other collateral court, including the U S District Court of Wyoming, or the Court of Appeals herein, has jurisdiction, power, or authority in law to collaterally relitigate, or annul the prior final judgments therein, or to relitigate, vacate or modify the rights of litigants, privies or grantees acquired therein. The complaint so alleges, and this is admitted.

3 That any attempt of any subsequent collateral court to do so, or to interfere with, obstruct, alter, delay, modify or defeat the prior exclusive sole jurisdiction, custody or control of the prior court over the properties therein sought to be appropriated, herein case 4182, after summons, March 17, 1928, (R par 4 to 18, pgs 4-13) is totally without jurisdiction, is totally void, and a void judgment is the same as if no judgment had ever been entered, and such void judgment cannot be the bases of any right, or title, or interest as against such right title, claim or interest litigated and adjudged in the prior case. It follows that the court in the subsequent case 4561-50 Wyo 277, and other subsequent collateral cases cited by the Court of Appeals were each and all totally without jurisdiction, totally void, and constitute no defense whatsoever to the Complaint herein. The Complaint so alleges. It is admitted.

4 That the final judgments in cases 4182 and 4623 of the Fremont County Wyoming District Court, and in 40 Wyo 524 and cases 1667 and 1676 of the Supreme Court

gave Tibbals valuable property rights in and to the properties therein adjudged, which property rights are protected by the 5th and the 14th Amendments to the Constitution of the United States forbidding taking of property without due process of law and forbidding a denial of equal protection of law. And further that the final court execution of those judgments, with sale, deed, and confirmation of sale conveys a full title, valid in law, and a title which cannot be thereafter taken away, denied or abridged without violating the above mentioned constitutional prohibitions. The Complaint alleges deprivation of these rights. Defendants admit same.

5 The title acquired by Tibbals under the final, res judicata, CONCLUSIVE judgments, sale and deed carries the full right, privilege and immunity of right to possession, use, and enjoyment of the court deeded properties, and deprivation of such rights by defendants from plaintiff as grantee of Tibbals, and also his further right as owner of a contingent interest in the property involved in case 4182-4623- 40 Wyo 524, cases 1667-1676 of the Supreme Court at all times after March 17, 1928, date of summons in case 4182, amounted to a taking of property without due process and deniel of equal protection of law. The complaint alleged this deprivation of rights continuing to the present day. The defendants admit the allegation.

6 The complaint alleged deprivation of the right of plaintiff to be free from further and continuing annoying litigations with defendants as a right privilege and immunity protected by the same provisions of the U S Constitution. It alleged a deprivation continuing to this day. And the further discrimination of being compelled to litigate with a stranger to his title, a wilfull malicious trespasser, and imposition never imposed on other litigants or citizens. And the now further most humiliating imposition of being subjected to never-ending litigation

with Judges of State Courts for their violation of duty and sworn obligation to protect him from a deprivation of his property by trespassers without due process of law, and a denial to him of the equal protection of the law. And the subjection of plaintiff to punishment and reprisals for defending his property and his rights in the courts of his state and nation. The defendants admit this.

7 The complaint alleges ownership of his property by two deeds of purchase, and denial of the rights privileges and immunities enuring to him as such purchaser, and rights enuring to him as a member of society, and as enuring to him as a human being under the assurances of the Divine conception, such deprivation being the wilful, malicious purposeful discrimination, evil designed conspiratorial act of defendants. And defendants admit this by their motion to dismiss.

8 The complaint alleges that the alleged receiver Graham, acting in conspiratorial concert with defendant Harnsberger, with no possible semblance of legal right, entered upon plaintiff's property, and that thru the continuing conspiratorial concerted acts of defendants, Judge Blume and state judges has held the trespassing in possession of plaintiff's property for over 24½ years. That Judge Lewis in case 4561 allowed illegal claims against the properties, and directed alleged receiver to sell the properties to Pioneer Carissa Gold Mines, and pay these illegal claims, and all this was done. That under the void leases, defendants depleted the properties by taking out and removing and selling over $70,000. of mineral ores. Plaintiff in addition to suffering loss of the possession, use and enjoyment of his property, now finds himself totally divested of his title, And defendants by their motion to dismiss admit all these allegation, and that they acted wilfully, maliciously with the purposeful intent to discriminate against plaintiff. Further they admit the allegations of the complaint that in so doing

plaintiff was deprived of his property without due process of law and was denied the equal protection of the law.

It is established law that a judgment outside the issues, or contrary to the issues is void. It was the duty of the Court of Appeals to decide the appeal on the issues and record before it. Neither the District Court below, nor the Court of Appeals had anything except the Complaint, and motion to dismiss before it. All allegation of the Complaint are confesssed and admitted.

It is established law that neither the opinion of a court nor its reasoning can be looked to as a basis to support a plea of res judicata. Neither is a court permitted to appropriates unsupported statements in the brief of the adverse party as a substitute for a pleading of res judicata. The plea of res judicata must be based on a specific pleading. Such pleading must allege the essential facts to support res judicata. In the case at bar, it was necessary that defendants, by special and affirmative plea (Rule 8 c-12 h) allege the specific judgment relied on. There must be a plea of identity of parties, or privies, of subject matter, and facts showing jurisdiction in the prior court to render the particular judgment it did render; and that the matter and issue adjudged was the essential issue adjudged by the court, and without a finding on that particular the judgment could not have been rendered. There was no basis for the Court of Appeals to show a judgment of the state court in the cases it cited sufficient to sustain res judicata. The defendants had no pleading at all. Res judicata is an affirmative plea, (Rule 8 c; and failure to plead any affirmative matter is a waiver thereof. This included judicial immunity. There was no identity of subject matter. The complaint (R par 1 pg 3) set up a new title, a deed from the prior owners. The court of Appeals cites 50 Wyo 277 and as well 172 Fed 2nd 449 to establish prior adjudication under the Complaint, when that new title was acquired after those decisions.

The Court of Appeals was confined to the motion to dismiss, and this admitted the allegations of the complaint. This complaint did not even mention case 172 Fed 449. This was placed before the court by the unsupported statements of defendants' briefs. Neither did defendants plead judicial immunity. Yet the District Court, SUA SPONTE adjudged such defense for Judges Lewis and Blume, and the Court of Appeals affirmed the lower court's action.

There was not even a motion for summary judgment. Had such motion been interposed it would have required a supporting affidavit by defendants, setting up the prior judgment relied on, with a showing of identity of parties, subject matter, and with jurisdiction in the court to render the particular judgment. To this plaintiff would file a counter affidavit, showing lack of any essential element of res judicata. This provides a hearing, and if there is any question on an issuable fact, then the motion fails. Here was a new title set up in the complaint, with allegations of lack of jurisdiction, and voidness of the attempted relitigations cited. The complaint in alleging the final judgment, sale and deed in cases 4182-4623- 40 Wyo 524, cases 1667-1676 of the Supreme Court stated a perfect claim, in that the judgment and title was not subject to relitigation in any subsequent collateral case. That the purchaser at the sale, and plaintiff his grantee were free from taking notice of, or from litigating by any of the subsequent colateral cases relied on by counsel for defendants. Yet plaintiff is even now compelled to litigate with defendants, and Judges, concerning matters not subject to relitigation. This is discrimination, forcing on plaintiff a denial of his rights, privileges and immunities to which no other citizen or litigant can be required to do.

The Court of Appeals says:

"The substance of the prolix and redundant Complaint is that the PROTRACTED STATE LITIGATION, had

the designed and conspiratorial effect of depriving appellant of his adjudicated property rights, without due process of law or the equal protection of the law. The litigation complained of is in the reported decisions. See Tibbals v Keys 281 Pac 190— * *" This is 40 Wyo 524.

The complaint alleged such to be a fact, and that it was done wilfully, maliciously, conspiratorially, with the designed evil and purposeful intent to discriminate against plaintiff, and that it had accomplished that purpose in violation of the Civil Rights Acts of Congress. The motion to dismiss admits this. The Court of Appeals by citing 40 Wyo 524, and the allegations of the complaint, likewise admits the statement of a perfect claim. The Wyoming Supreme Court therein established a FIRST TRUST, which is equitable title of ownership, superior to a mere lien. And this was foreclosed with final judgment, and final sale and deed to Tibbals who in turn deeded to plaintiff.

The court of Appeals then cites the subsequent collateral case of 50 Wyo 277, and other subsequent collateral litigations and states that these subsequent collateral courts had jurisdiction to, and did relitigate and annul the prior final, res judicata, CONCLUSIVE judgment in 40 Wyo 524, a principle of law which the Supreme Court of the United States, and the Federal Courts, including this same 10th Circuit Court of Appeals for other litigants, along with other State Supreme Court decrees cannot be done, and that any attempt to do so is without jurisdiction, and the subsequent collateral judgment is totally void, a complete nullity, which cannot be set up as title, right, or claim, or to justify any defendant whatsoever setting up such subsequent void judgment as a defense.

The Court of Appeals continues:

"It is sufficient for the purposes of this appeal to state that every act complained of was done and performed in

the prosecution and decisions of matters in a court of competent jurisdiction. The court in each instance had jurisdiction of the subject matter and of the parties, and was authorized and empowered to decide the issues presented. Citing Bottone v Lindsay 170 Fed 2nd 705, cert denied 336 U S 944; Ryan v Scoggin 245 Fed 2nd 54. The judgment is affirmed."

This first sentence is true as to 40 Wyo 524, which is so alleged in the complaint as the court therein did have complete jurisdiction over parties, subject matter, with full and complete jurisdiction render the particular judgment, namely, establish the FIRST TRUST, decree foreclosure, which mandate was finally executed by sale, deed, and confirmation of sale and deed to Tibbals Oct 15, 1932, in ancillary case 4623, set up in the Complaint, and so admitted and confessed, is true and correct.

In so far as it relates to the subsequent collateral litigations in 50 Wyo 277, add other cited case, it is not true. A new title (R par 1, pg 3) set up in the complaint herein was not existent in 50 Wyo 277, or 172 Fed 2nd 449. The subject matter was not the same. The court herein had no pleading before it except the complaint. There was no pleading by any defendant setting up the facts for res judicata in 50 Wyo 277, as against the specific alledation of res judicata by 40 Wyo 524. Since 40 Wyo 524 with complete and unquestioned jurisdiction was set up, and admitted, it is impossible to attribute jurisdiction to relitigate in case 50 Wyo 277.

The Court of Appeals has only emphasized and made plain the guilt of defendants in depriving plaintiff of his property without due process of law, and denying him the equal protection of law. Further the Court of Appeals refused to take notice of or adjudicate on the denial of the District Court of the equal protection of Rule 15a, 8 c and Rule 12 h. It further refused to adjudicate on the assignments of error before, namely—judicial immunity of defendant Judges Lewis and Blume; abatement of action

by death of Judge Lewis; and to take notice of and adjudicate on the allegations of the Complaint as stating a claim on which relief could be granted against all defendants.

JURISDICTION

Jurisdiction is conferred under Sec 1254 (1) Title 28 U S C A—(Judicial Code and Judiciary) which provides: "Cases in Courts of Appeal may be reviewed by the Supreme Court by the following methods;

(1) By Writ of Certiorari granted upon the petition of any party to any Civil or Criminal case, before or after rendition of judgment or decree. The date of the judgment of the Court of Appeals herein sought to be reviewed was Dec 20, 1957, and is reported at Fed 2nd.

Jurisdiction in the lower court was conferred under the Constitution and laws of the United States, particularly the 5th and 14th Amendments to the Constitution of the United States, and the Civil Rights Acts of Congress, embodied in 42 U S C A Sec 1983-1985-1986-1988, 1954 Supp.

THE ACTION

This is a suit invoking the direct jurisdiction of the Federal Courts to redress deprivation of Federal Civil Rights enuring to plaintiff under the constitution of the United States, particularly the 5th and 14th Amendments to the Constitution of the United States in violation of the Civil Rights Acts of Congress embodied in 42 U S C A, Sec. 1983-1985-1986-1988, 1954 Supp. Further depriving plaintiff of the inalienable inherent rights, privileges and immunities enuring to him as a citizen of the United States and of Wyoming, and as a member of the American Socity, such rights being embodied in the pronouncements of the Declaration of Independence that: "All men are created equal; that they are endowed BY THEIR

CREATOR with certain inalienable rights; that among these are the right to life, liberty and the pursuit of happiness;"—which include the equal American right to own, possess, and enjoy property. And further depriving plaintiff of the rights privileges and immunities possessed by him and embodied in the God Given assurance and protection proclaimed by the Divine Law of the Master that: "No man can enter into a strong man's house and spoil his goods, except he will first bind the strong man; and then he will spoil his house—(St Mark 3-27)

This is not a suit to relitigate, or to vacate, enjoin, set aside, alter, modify or amend a former judgment of the State court, as the Court of Appeals, and the U S District Court so erroneously found and adjudged. It is a suit to determine if the defendants have under color of state law, subjected or caused to be subjected, plaintiff, a citizen of the United States, and within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws in violation of 42 U S C A Sec 1983, 1954 Supp. This is a tort action, under which, all who aid, abet, encourage, influence or assist in bringing about the tort, are jointly and equally liable with the principal. This is one cause of action set up in the complaint.

It is a suit to determine if two or more defendants or other persons, whether defendants or not, have conspired for the purpose of impeding, hindering, obstructing or defeating in any manner, the due course of justice in Wyoming, with intent to deny plaintiff the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce the right of plaintiff to the equal protection of the law, in violation of 42 U S C A Sec 1985- 1954 Supp. as charged in the complaint.

It is a suit to determine if defendants, having knowledge of the wrongs conspired to be done, and mentioned

in Sec 47 of this title, are or were about to be committed, and having power to aid in preventing the commission of the same, neglects or refuses to do so—if the wrongful act be committed—shall be liable—for all damages caused by the wrongful act— * and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants—42 U S C A Sec 1986, 1954 Supp (For statutes see Appendix, pg 43-44)

The above statutes are a companion statute to Sec 19—Criminal Code—18 U S C A Sec 51 and are construed PARI MATERIA. The criminal statutes protect the public, and vindicates a public wrong, while the civil statutes vindicates the rights of the individual. In either instance, it is necessary to examine, analyze, and apply the conduct of defendants, whether Judges or individuals, to determine if the statutes, civil or criminal, have been violated, but the purpose is not to relitigate.

Property may be taken without due process of law, and equal protection of the law may be accomplished under color of law by state action, either thru its executive, or legislative, or judicial branches of government. It is no less a taking of property without due process of law, or denial of equal protection of law when done by the judicial branch, than when done by either of the other branches. If done by the judicial branch it necessarily is accomplished thru judicial judgment, decree or order. The question then is; "Has there been an abuse or misuse of judicial power or authority whereby plaintiff has been deprived of his federal rights, privileges and immunities?"

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I

1. Certiorari should be granted because the Court of Appeals in the instant case has decided an important

federal question in a way probably untenable and in conflict with the applicable decisions of the Court, and as well in conflict with prior decisions of this same Court of Appeals for other litigants under like and similar circumstances, namely: Contrary to the law of this Court, as well as the law of this same Court of Appeals for other litigants under like and similar circumstances, and in conflict with the established law of Wyoming for other litigants under like and similar conditions, and contrary to the universally established law of the entire land, which decree:

a) That the finad judgment, executed by judicial sale, deed, and confirmation of sale and deed, of a Court of competent jurisdiction, with jurisdiction of the parties, and subject matter, and jurisdiction to render the particular judgment it did, is final, absolute and conclusive between the parties and privies, and neither the judgment, or judicial sale, deed, with confirmation of the judicial sale and deed—the order of confirmation being a final conclusive judgment possessing all the attributes of a final judgment, is not subject to relitigation, attack, question, alteration, modification, defeat, delay or vacation in any subsequent collateral court or case between the same parties or privies, or any one claiming under such parties or privies:

b) That any such judgment itself is a valuable property right, a Rule of Property and the property or property right and title acquired under such judgment, or judicial sale constitute a valuable property right within the protection of the 5th and 14th Amendments to the Constitution of the United States. And the deprivation and taking away of such property or property right or any of the rights privileges or immunities enuring therefrom to the purchaser at such judicial sale is a taking of property without due process of law and a denial of the equal protection of the law in violation of the 5th and 14th Amendments to the Constitution of the United States.

Voorhees v Bank 10 Peters 450
Gringnon' Lessees v Astor 43 U S 319
Throckmorton v U S 98 U S 86

Cromwell v White 94 U S 351- 24 Led 195
United States Shoe Co v U S 258 U S 454, 66Led 717

D U A Uranium Co v Benton 149 Fed Sup 667
Tait v Western Maryland Ry Co 289 U S 620- 77 Led 1405
U S v Mossier 226 U S 236 69Led 262
U S v Herter 148 Fed Sup 349
Griffity v Bogert 59 U S 158, 15 Led 307

Certiorari should be granted because the decision of the Court of Appeals in the instant case is in conflict with the law of the foregoing cases and the effect is to deny petitioner the equal protection of the law and to take his property without due process of law by attributing jurisdiction to the court in the subsequent collateral case 4561, and 50 Wyo 277 to relitigate the prior final, res judicata, conclusive judgment, sale, deed, and confirmation of sale and deed in the prior cases, 4182-4623 of the Fremont Wyoming District Court and 40 Wyo 524, cases 1667, and 1676 of the Supreme court set up in the complaint and to annul the same.

II

Certiorari should be granted because the Court of Appeals in the instant case has decided an important federal constitutional question probably untenable and in direct conflict with the decisions of this Court, and in conflict with decisions of the same Court of Appeals, and also other federal courts, and also in conflicted with decisions of the Supreme Court of Wyoming for other litigants under like and similar circumstances, embodied in the principle of law commonly referred to as the law of prior, sole, exclusive jurisdiction, custody and control of properties in the First Court, which is the court whose jurisdiction is first invoked by filing the Bill in this and fed-

eral courts, and from the date of service of summons in Wyoming under Sec 3-907 Wyo Stat, 1945, the object and purpose of suit being to appropriate the specific properties to the claim of the plaintiff. The rule is that from date of filing the Bill, or service in Wyoming, the properties are in the prior sole exclusive jurisdiction, custody and control of the First Court, and this continues on until the purpose of the suit is accomplished by final judgment, execution and sale. And then on in aid of jurisdiction to place the purchase at the sale in possession and to protect the title of the purchaser at the judicial sale. It is a Rule of Property and of jurisdiction.

Further, that from the time of filing the Bill and securing service in Wyoming, no other subsequent court of concurrent jurisdiction, in a subsequent collateral case has jurisdiction, power or authority in law law to interfere with, obstruct, delay, defeat or in any way molest the process of the First Court. And any attempt to do so is totally void and without jurisdiction. And any contrary order or judgment of such subsequent collateral court confers no adverse right whatsoever as against the prior plaintiff, and cannot be set up as a defense, or claim of right by anyone claiming thereunder.

Kline v Burke Construction Co 260 U S 266
Root v Woolworth 150 U S 401
Riversides Cotton Mills Co v Alabama & Georgia M Co 198 U S 189
Fayweather v Ritche 195 U S 296
Rickey Land & Cattle Co v Miller 152 U S 258
Freeman v Howe 7 How 612
Buck v Galbreath 70 U S 334
Stillman v Combe 198 U S 435
Lang v Chotaw 160 Fed 359
Brun v Mann 80 80 C C A 513-151 Fed 145
Covell v Hyman 11 U S 176
United States v Johnson 73 U S 166
Farmers Loan & Trust Co v Lake Street Ry 177 U S 51

Wisewall v Sampson 55 U S 52
State v Palmer 158 Fed 705- 212 U S 118

This same Court of Appeals;

Continental Bank & Trust Co v Apodaca 239 Fed 2nd 295

The Wyoming Supreme Court:

Bank of Chadron v Anderson 6 Wyo 518,48 Pac 197, —Quoting Taylor v Taintor 16 Wall 366
Tibbals & Spriggs v Graham,Rec. 50 Wyo 277— after stating this as a Rule of Property, denied the plaintiff the benefit of the law it so declared by declaring that case 4561—Marrin v Midwest Mines Corp, filed Nov 3,1930 was prior in time to March 17, 1928,the date Tibbals filed and served case 4182, 40 Wyo 524.

Other State Supreme Courts:

State ex Rel Sullivan v Reynolds 209 Mo 161.107 SW 487
Ketchem v District Court (Okla) 198 Pac 481
Stanolind Oil Co v Busy 90 Pac 2nd 877 (Okla)
Black Panthier Oil Co v Swift 170 Pac 238 (Okla)
Operator's R P Co v Tulsa 56 Pac 2nd 400 (Okla)
Atlas Supply Co Roberts 68 Pac 2nd 76 (Okla)
Neilson v Schiller (Utah) 66 Pac 2nd 365
Holm v Pratt 176 Pac 266

Certiorari should be granted because the decision of the Court of Appeals in the instant case, is in conflict with the law declared in the foregoing decisions, and is in conflict with Sec 3-907 Wyo Stat. 1495—which confer full, complete, prior, exclusive jurisdiction, custody and control of the properties on the prior court in cases 4182 and 4623 of the Fremont County Wyoming District Court and cases 40 Wyo 524 and cases 1667 and 1676 of the Wyoming Supreme Court to render final judgment, issue order of sale, make sale and deed of the properties at issue therein, and to confirm such sale and deed to Tibbals as set up in the complaint, which judgment sale and deed

and the title of the purchaser are not subject to relitigation, question, or annulment.

And certiorari should be granted herein because the decision of the Court of Appeals in the instant case is in conflict with the aforesaid decisions of this Court, and in conflict with its own prior decisions for other litigants under like and similar circumstances, and in conflict with the decisions of other federal Courts of Appeal, in that it attributes jurisdiction to the subsequent collateral court in 50 Wyo 277, and other cited cases, to relitigate, obstruct, defeat, annul, set aside and vacate the prior final, CONCLUSIVE, res judicata judgment, sale, deed, and confirmation of sale and deed to Tibbals, grantor of plaintiff, in cases 4182—and the ancillary case 4623 of the Fremont County Wyoming District Court, and of the Wyoming Supreme Court on appeal in 40 Wyo 524, and cases 1667 and 1676 of the same Supreme Court, the effect of which is to deny petitioner the equal protection of the law, and take away his property without due process of law, and to deprive petitioner of the right, privilege and immunity to own, possess and enjoy his property, enuring to him under said deeds, and enuring to him as a member of the American society and a citizen of the United States, and enuring to him as a human being under the concepts and pronouncements of Divine Law, all in violation of petitioner's Civil Rights under 42 U S C A Secs 1983-1985-1986-1988 (1954 Supp).

III

Certiorari should be granted because the Court of Appeals in the instant case has decided an important question and rendered a decision probably untenable and in conflict with the applicable decisions of this Court, and other federal Courts of Appeal, and in conflict with the State law of Wyoming. The effect of the decision of the Court of Appeals herein is to deprive petitioner of the

right, privilege and immunity accorded all other citizens and litigants under like and similar circumstances to have litigation end; to have an end to litigation with parties and privies, and those claiming under such parties and privies; to be free from taking notice of or relitigating questions that were finally and conclusively litigated by the Court of competent jurisdiction, with full and complete jurisdiction of the parties, and subject matter, and with jurisdiction to render the particular judgment it did render; to be free from taking notice of or relitigating with a stranger in right and title; to be free from litigating with a wilfull, malicious trespasser his false and void claim to the right of possession, or title to the properties involved in and adjudicated in the final, conclusive, res judicata judgments of the Court in cases 4182, and the ancillary case 4623 of the District Court of Fremont County, Wyoming, and 40 Wyo 524 on appeal, and cases 1667 and 1676 of the Supreme Court, under and by virtue of which final conclusive judgments the property therein involved was sold by the court and deeded to Tibbals, the grantor of petitioner. Questions and issues finally and conclusively adjudged and determined in the aforesaid cases were:

1 The court in said cases established and foreclosed the First Trust in the properties therein sought to be appropriated to the claim of Tibbals, grantor of petitioner;

2 Under mandate of the Supreme Court of Wyoming in 40 Wyo 524, the First Trust of Tibbals, grantor of petitioner, was foreclosed on Oct. 15, 1932, by judicial sale and deed to Tibbals in the ancillary case 4623 aforesaid; (R par 18-pg 11) of all of said properties;

3 In the final judgment in case 4623, the Court did specifically adjudge that alleged receiver Graham had no claim, right, or title whatsoever in and to said properties involved in the First Trust being therein foreclosed, and

expressly excluded the alleged receiver from any such claim by its final judgment; There never was and never could be any question but that this was the correct judgment under law.

4 Tibbals had been and was being subjected to useless, baseless, annoying repeated and endless litigation, and relitigations, with the same parties, and privies, including the alleged receiver of a privy. He set up by specific plea the fact of this baseless neverending litigation and relitigations in case 4623 and asked and demanded of the court that he be relieved from further annoying, baseless relitigations with the same parties and privies over questions that had been finally and conclusively determined by the final judgment in 40 Wyo 524, and cases 1667 and 1676 of the Supreme Court (R par 11-pg 7) and on hearing the court in its final judgment in case 4623, did grant the plea, did finally and conclusively adjudge that the alleged receiver had no right or claim whatsoever to the properties, and did enter a permanent injunction in favor or Tibbals, enjoining the adverse parties, and those claiming under such adverse parties from ever thereafter carrying on or annoying Tibbals, grantor of plaintiff herein, with further interferring with Tibbals in getting execution and foreclosing his First Trust, or from interferring with the sale, or the title acquired at the sale, or his purchaser at the sale, or from molesting him in any way from enjoying the full fruits of his judgment, or the title of the purchaser at the sale. The court did then render final conclusive judgment in favor of Tibbals, did make the final judgment as entered on the mandate in case 4182, decreeing foreclosure, a part of the final judgment in case 4623; and did then again reestablish the First Trust of Tibbals in the properties, and did decree foreclosure of the First Trust by sale of the properties in accordance with the mandate of the Supreme Court in 40 Wyo 524; and did enjoin any further interference with

Tibbals in foreclosing his final conclusive judgment. (R. par 18-pg 11)

4 The adverse parties, and privies, including the alleged receiver Graham, bowed to and accepted as final and conclusive the final judgment of the court and the injunction against them therein enjoining further interference with Tibbals or obstruction to the process of the court. They filed in the case a written Waiver of Right of Appeal, and in it specifically asked the court to make the judgment aforesaid final, absolute and conclusive. The adverse parties and owners of the properties were satisfied with the final judgment and ceased further opposition, or attempts at further relitigation. While the foreclosure sale was being advertised they filed another and further written ratification of the judgment, which was joined in by this same alleged receiver Graham, wherein all of said parties asked the court to make the foreclosure sale, and to sell and deed the properties to Tibbals, and confirm the sale, and deed to Tibbals. And therein did further submit to the court for his approval a written option wherein Tibbals gave an option to a third person to purchase his judgment at any time before sale, or the title acquired at the sale, which option included a provision directing the manner of bidding at the sale inserted for the benefit of the adverse parties, and asked the court to make therein his written order approving the option and manner of bidding. The court did make therein his written order approving the option, and the manner of bidding at the sale. And the adverse parties including the alleged receiver Graham did file therein their written ratification of the option, and manner of bidding, and their written ratification of the order of the court made therein approving the option and manner of bidding, and specifically asked the court to make the sale and deed to Tibbals, and confirm the sale and deed to Tibbals without further notice to them. In strict conformance with law, the court did foreclose the First Trust

by final judgment and foreclosure sale and deed, and confirmation of sale and deed to Tibbals, grantor of petitioner. And the owner did later, on Feb 20, 1950, by deed convey to petitioner any and all claim of right title, interest or demand in and to the properties to petitioner (R par 1-pg 3). Hence every point afterwards set up by the court in 50 Wyo 277, and by the Court of Appeals in the instant case, was placed before the court in its judgment and sale in case 4623, by request of the adverse parties, including alleged receiver Graham was adjudged, finally and conclusively. There could be no possible EXTRINSIC fraud, a necessary and essential element of jurisdiction, and in the absence of such essential element of jurisdiction the Court of Appeals in the instant attributed jurisdiction to the subsequent collateral court in 50 Wyo 277 to relitigate an alleged fraud finally adjudicated by a prior court of competent jurisdiction in case 4623, and approved by express written order and judgment, followed by written approval and ratification by all adverse parties, including the same alleged receiver.

Throckmorton v U S 98 U S 82

The Court of Appeals in the instant case, in conflict with the established law of this court in the above leading case, has deprived petitioner to the right privilege and immunity to be free from endless litigation with a trespassing alleged receiver, a stranger in right or title (May v Pention, (Wyo) 16 Pac 2nd 35; an alleged receiver with no creditors (Simmons v Parrent (Wyo) 256 Pac 2nd 105), attributing to the alleged received rights he did not have under the law of Wyoming Barber v Rena Nash Motor Co 260 Pac 2nd 928,) whereby petitioner is denied the equal protection of the law and deprived of his property without due process of law.

IV

Certiorari should be granted because the Court of Appeals in the instant case has decided an important question and rendered a decision probably untenable and in conflict with the applicable decisions of this Court and other federal Courts of Appeal in this:

That petitioner has been deprived of rights privileges and immunities secured to him by the 5th and 14 Amendments to the Constitution of the United States not to be punished and subjeced to reprisals thru citation for conempt (R par 25, pg 14-15) for asking a rehearing in 50 Wyo 277, and setting up therein that the decision was the result of bias and prejudice of Judge Blume and associates, and setting up that his property was being taken without due process of law and he was denied the equal protection of the law. As a further ground for rehearing, petitioner set up he was entitled to have the case determined on TRUTH, but contrary thereto the judges as a basis for jurisdiction had created and asserted two premises, both false; and that the Court had by judicial assertion created and asserted title in a wilfull malicious trespasser as against the owners, whereby plaintiffs were deprived of their property without due process of law and were denied the equal protection of the law. And again had been subjected to punishment and replisal for having exercised a legal right as a candidate for Supreme Court Justice opposing the Judge who had rendered the opinion, and in the campaign had exposed the same conduct of Judge Blume and his associates in their decision in 50 Wyo 277, and thru such reprisal and punishment plaintiff was suspended from the practice of his profession, his means of livelihood for himself taken away, his good name and reputation blasted, while Judge Blume caused the identical District Judge who sat with Jude Blume in 50 Wyo 277 to preside at plaintiff's reprisal trial, conduct abhorant to the Amer-

ican concept of natural justice, and amounting to a deprivation of the constitutional right privilege and immunity of petitioner to a fair impartial trial, in contravention of 42 U S C A Sec 1983-1985-1986, 1988 (1954 Supp)

Bonor v Keys 162 Fed 2nd 136

V

Certiorari should be granted because the Court of Appeals in the instant case has decided an important question and rendered a decision probably untenable and in conflict with the applicable decisions of this Court, and other federal Courts of Appeal in this:

Was petitioner denied the equal protection of the law, and was his property taken without due process of law in contravention of the 5th and 14th Amendments to the Constitution of the United States, and was petitioner deprived of federal rights, privileges and immunities in violation of his Civil Right under 42 U S C A Sec 1983-1985-1986-1988 (1954 Supp) as a result of the denial by the District Court below, affirmed by the Court of Appeals herein, of petitioner's absolute legal right to amend his Complaint under Rule 15 A of the Rules of Federal Civil Procedure? And was he deprived of the same Civil Rights by the action of the District Court below in ignoring Rule 8 c and 12 H of the same Rules under which all affirmative matters, such as judicial immunity, and res judicata must be specially pleaded, or be waived, and the action of the court SUA SPONTE, in interposing and favorably adjudging a defense of judicial immunity for defendants Lewis and Blume, and a defense of res judicata for all defendants? And was petitioner deprived of the same Civil Rights by the action of the said courts in the special of res judicata, and the final and conclusive judgments of the Fremont County Wyoming District Court in cases 4182 and 4623, and of the Supreme Court

of Wyoming in case 40 Wyo 524 and cases 1667 and 1676 of the same court? And without a pleading of any defendant, interpose and favorably adjudge for all defendants a plea of res judicata arising thru the void judgments of the same Wyoming courts in cases 50 Wyo 277 and other cases cited by the Court of Appeals herein?

Peckham v Scanlon 241 Fed 2nd 761
Park-in-Theater Co Paramount Richards Theaters 9 FRD 267
Rupe v Associated Electric Co 6 F R D 309
Fisher v Karl 6 F R D 268
Sheridan Wyoming Coal Co v Krug 172 Fed 2nd 282
Parkinson v California Co 233 Fed 2nd 432—10th Circuit
U S v Newbery M Co 123 Fed 2nd 453
Keene Lumber Co v Leventhal 165 Fed 2nd 815
Keller v French 22 Fed 2nd 341- af 278 U S 563-73 Led 507
Van Sant v American Express Co 159 Fed 2nd 355

And the further question: Did the action abate as to Judge Lewis By his death?

Sec 1988 provided for substitution; Rule 25 F R C P
Nelson v Knox 230 Fed 2nd 483
And Sec 89-1227 Wyo Stat 1945

VI

Certiorari should be granted because the Court of Appeals in the instant case has decided an important question and rendered an opinion probably untenable and in conflict with the applicable decisions of this Court, and in conflict with the applicable decisions of other federal Courts of Appeal, and in conflict with the Constitution of the United States, particularly the 5th and 14th Amendments to that Constitution; and in conflict with the Constitution of Wyoming, especially Secs 2-6-7-8-9-20-32-33-34 of Art I and Sec 25 of Art V thereof; and in conflict with Sec 3-907; and Sec 1-112 of the Wyoming Statutes-1945; and in conflict with the established law

of the land as decreed by the decisions of the Supreme Court of the United States, and federal Courts; and in conflict with the decisions of the Supreme Court of Wyoming for other litigants under like and similar circumstances; and in conflict with the law as declared by the Supreme Courts of other States; and in conflict with the fundamental principles of Constitutional law to the extent that both cannot survive as co-existent, in this:

That it was adjudged and decreed by the Court of Appeals in the instant case that defendants, Judges Lewis and Blume, members of the Wyoming State Judiciary acting in their respective judicial capacities, were each immune from suit when sued by petitioner in the federal courts for violation of petitioner's federal Civil Rights under 42 U S C A Sec 1983-1985-1986-1988, (1954 Supp). And that this is true under the allegations of the Complaint, admitted and confessed by their motions to dismiss, that as such State Judges, they so abused and misused their power and authority in their judicial acts that they denied petitioner the equal protection of the law, and took away his property without due process of law in contravention to the 5th and 14th Amendments to the constitution of the United States, and in contravention to his rights, privileges and immunities secured petitioner under said constitutional provisions, and as enuring to him as a citizen of the United States and as a member of society, and as enuring to him as a human being possessed of the same rights privileges and immunities under the Divine Law of the Master pronunced in Mark 3-27: "No man can enter into a strong man's house and spoil his goods EXCEPT he will first bind the strong man; and then he will spoil his house."

The Court of Appeals in the instant case decreed that such Judges were so immune even tho as alleged and admitted that they were actuated by bias, prejudice, malice, hatred, enmity and ill-will, and acted with the evil and

designed intent and purpose to purposefully discriminate against petitioner, and to deny him the equal protection of the law and take way his property without due process of law. Further that such Judges did actually so abuse and misuse their judicial power and authority as Judges and by their judicial acts did accomplish their evil purpose, and did deny petitioner the right to the use, ownership, and possession of his property for over 24½ years, during which time they held in possession thereof a wilfull, malicious trespasser, under guise of alleged receiver and permitted him and defendant Pioneer Carissa Gold Mines Inc, alleged lessee of the alleged receiver, to deplete the properties by removing therefrom over $70,000. of mineral ores. That further the defendant Judges did approve the false, judicially absurd claim of the alleged trespassing receiver to title of the properties, and did direct and cause him to sell and give a court deed to Pioneer Carissa Gold Mines to said properties, all of which defendants, thru conspiratorial action, did accomplish, to the great irreparable damage of petitioner. Such conduct of defendant Judges, and their conspiratorial defendants was in open, arbitrary, tyranical defiance of the Bill of Rights of the Constitution of the United States, and the Bill of Rights of the Wyoming Constitution, and the express statutory law of Wyoming, and contrary to the universally established law of the entire land.

And further certiorari should be granted because an important federal constitutional question involving judicial immunity is herein presented upon which there is irreconcible conflict between the holdings of the different Courts of Appeal on whether Congress thru 42 U S C A Secs 1983-1985-1986-1988, (1954 Supp) has by legislative action wiped out every vestige of claim to judicial immunity as sometimes recognized under the old common law. The Third Circuit Court of Appeals in Picking v Pennsylvania Ry Co, 151 Fed 2nd 240 declared that Congress had the power to and did, intentionally, wipe out

every vestige of judicial immunity; In Cobb v City of Maldon, 202 Fed 2nd, 701, the U S Court of Appeals agrees, and declares that Congress created a new federal tort where all that has to be proved is that defendants, as a result of their conduct—under color of state law—has in fact caused harm to plaintiff—depriving him of a right secured by the constitution of the United States; McShane v Moldovan 172 Fed 2nd 1016 is in agreement; and other courts, Bonar v Keys 162 Fed 2nd 136; Dinwidde v Brown 230 Fed 2nd 465; Dye v Cox 125 Fed Sup 714; McCoy v Providence Journal 160 Fed 2nd 760; Toledo v Luebo De James 119 Fed Sup 429 all take the same view. On the other hand, the Court of Appeals in the instant case, citing its own decisions in Bottone v Lindsley 170 Fed 2nd 705, and Ryan v Scoggin 245 Fed 2nd 54, agrees with Francis v Craft 203 Fed 2nd 809; and Tate v Arnold 223 Fed 2nd 782 in still clinging to the old common law doctrine of judicial immunity for judges. There is also great confusion, uncertaintity, and disagreement among the different Courts of Appeal, and lower federal courts as well, on the scope and construction of this court's decision in Tenny v Brandhove 341 U S 367, 95 Led 1019, which "prevents giving the act such an awesome construction" and citing this court in Bradley v Fisher 13 Wall 335, 20 Led 646 as authority for sustaining judicial immunity for Judges. So grave is the doubt and uncertaintity that the same Court of Appeals rendering the decision in Picking v Pennsylvania Ry Co is in grave doubt as to whether the Tenny case overrules its Picking decision that it hesitates to give its opinion on that point. Ginsburg v Stern 1, 25 Fed Sup 596; on appeal 225 Fed 2nd 245; and Ginsberg v Stern, case 12,165, just decided.

The conflict in decisions of the different Courts of Appeal and the question of doubt and uncertaintity as to whether this court in the Tenny v Brandhove case. 341 U S 367, 95 Led 1019 intended to overrule the Picking

case presents an important federal constitutional question which can only be settled finally, and bringing harmony to the federal and state judiciary by a clarifying opinion of this court by granting certiorari herein and declaring the law thereon.

The decision of the Court of Appeals in the instant case further is in conflict with the decisions of other federal Courts of Appeal in Sulp v U S 131 Fed 2nd 93; and U S v Jackson 235 Fed 2nd 925; and the applicable decisions of this court in Screws v U S 325 U S 91, 89 Led 1495; and U S v Classics 313 U S 99, 85 Led 1368, construing the companion criminal statute, Sec 19, Criminal Code 18 USCA Sec 51-construed PARI MATERIA, with the Civil Rights statute herein set forth as 42 USCA Sec 1983-85-86-88 1954 Supp

And contrary to the established law of this court in Ex Parte Virginia 100 U S 399; and Hodges v U S 203 U S 1; Hague v C I O 307 U S 496; and in conflict with Fayweather v Riche 195 U S 300. Brown v Allen 344 U S 535 declaring that no court has power to take the property of one man and hand it over to another, because it violates the 14th Amendment of the U S Constitution as a taking of property without due process of law and is a denial of the equal protection of law.

The decision of the Court of Appeals is so repugnant to the fundamentals of Constitutional government, that certiorari should be granted to preserve constitutional government in and for America.

STATUTES INVOLVED

42 U S C A Sec 1983-1985-1986-1988

Sec 1983—Civil Action for deprivation of rights—"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction

thereof, to the deprivation of any rights, privileges or immunities secured by the constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. R S Sec 1979"

Sec 985. Conspiracy to interfere with civil rights—Preventing officer from performing duty.;

"2—* * * or if two or more persons conspire for the purpose of impeding, hindering, ovstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the law;"

"(3)—* * * in case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, and act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R S Sec 1980"

"Sec 1986—Same—Action for neglect to prevent—Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in Sec 47 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful acts be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action.—* * *."

"Sec 1988—Proceedings in vindications of Civil Rights—"The jurisdiction of civil and criminal matters conferred on the District Courts by the provi-

sions of this chapter and Title 18 for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and if it is of a criminal nature, in the infliction of punishment of the party found guilty."

RULES OF FEDERAL CIVIL PROCEDURE—

"Rule 15—Amended and Supplemental Pleadings—(a) Amendments—A party may amend his pleading once AS A MATTER OF COURSE, at any time before a responsive pleading is served; or if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calander, he may so amend it at any time within twenty days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for responce to the original pleading, or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

"Rule 8 (c) Affirmative Defenses—In pleading to a preceding pleading, a party shall set forth affirmatively ——— . . . waiver, and any other matter constituting an avoidance or affirmative defense. . . .".

"Rule 12-(h)—Waiver of Defenses—A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1)—that the defense of failure to state a claim upon which relief can be granted, and the objection of failure to state a legal

defense to a claim may also be made by a later pleading, if one is permitted, or for motion for judgment on the pleadings, or at the trial on the merits; and except (2) that whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall then be disposed of as provided by Rule 15 (b) in the light of any evidence that may have been received."

Rule 25—If a party dies and the claim is not thereby extinguished, the court, within two years after the death may order substitution of the Parties. The death may be suggested upon the record, with substitution."

CONSTITUTIONAL PROVISIONS OF THE UNITED STATES—AMENDMENTS

V

"No person shall be — — — — * nor be deprived of life, liberty or property without due process of law—nor shall private property be taken for public use without just compensation."

XIV

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law."

WYOMING CONSTITUTION.

ART I

ARTICLE I

Sec 2 In their inherent right of life, liberty, and the pursuit of happiness, all members of the human race are equal;

Sec 6—No person shall be deprived of life, liberty or property without due process of law;

"Sec 7—Absolute arbitrary power over the lives, liberty and property of free men exists nowhere in a republic, not even in the largest majority."

"Sec 8—All courts shall be open and every person for an injury done to person reputation or property shall have justice administered without sale, denial or DELAY——"

"Sec 9—The right of trial by jury shall remain inviolate in criminal cases, but a jury in civil cases in all courts — —* may consist of less than twelve men/"

"Sec 20—Every person may freely speak, write, and publish on all subjects being responsible for the abuse of that right. And in all trials for libel, both civil and criminal the TRUTH, when published with good intent and for justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and the law under direction of the court."

"Sec 32—Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, nor in any case without due compensation".

"Sec 33—Private property shall not be taken or damaged for public use or private use without just compensation."

"Sec 37—The State of Wyoming is an inseparable part of the Federal Union, AND THE CONSTITUTION OF THE UNITED STATES IS THE SUPREME LAW OF THE LAND."

"Sec 34—All laws of a general nature shall have a uniform operation."

ART V—Sec 25—No judge of the Supreme or District Court shall act as attorney or counsellor at law.

WYOMING STATUTES 1945

"Sec 1-112,—No Justice of the Supreme Court shall practice as an attorney in any court in this state, nor give give advice touching any cause pending or to be brought therein.

"Sec 3-907—When the summons has been served, or publication made, the action is pending, so as to

charge third persons with notice of its pendency/; And while pending—NO INTEREST CAN BE ACQUIRED BY THESE PERSONS IN THE SUBJECT MATTER THEREOF AS AGAINST PLAINTIFF'S TITLE."

"Sec 89-1227—ABATEMENT—Except as otherwise provided, no action or proceeding in any court shall abate by the death of either or both of the parties there to—EXCEPT—in an action for libel, slander, malicious prosecution, assault or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office which shall abate by the death of either party."

HOLY BIBLE

"Mark 3-27 No man can enter into a strong man's house and spoil his good, EXCEPT, he will first bind the strong man; and then he will spoil his house."

PRAYER FOR WRIT

Wherefore your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Tenth Circuit commanding the Court to certify and send to this Court a full and complete Transcript of the record and of the proceedings of the said Court of Appeals in case numbered and entitled on its docket as No 5662, John J Spriggs Sr—Appellant v Pioneer Carissa Gold Mines Inc. a Corporation, and George B Colemere, Harry H Hime, Spencer J Lewis, Fred H Blume and Harry S Harnsberger, Appellees, to the end that this cause may be reviewed and determined by this Court, as provided by the statutes of the United States; and that the judgment of said Court of Appeals be reversed by this Court, and for such other and further relief as May be proper.

Dated this March 5th, 1958

JOHN J SPRIGGS SR—PETITIONER
Address: 671 Main Street, Lander, Wyoming

CERTIFICATE OF COUNSEL

I hereby certify that I am petitioner, and attorney pro se in the above entitled case and that in my judgment the foregoing petition is well founded in law and fact, and that said petition is not interposed for delay.

Dated at Lander, Wyoming, this March 5th, 1958
Address: 671 Main Street, Lander, Wyo

/s/ JOHN J. SPRIGGS, SR.
JOHN J. SPRIGGS, SR.,
Petitioner and Attorney for Petitioner, Pro Se

MOTION FILED JUN 1 4 1958
LIBRARY
SUPREME COURT, U. S.

NO. 864

IN THE SUPREME COURT OF THE UNITED STATES

October Term
1957

JOHN J. SPRIGGS, SR., PETITIONER,

v.

PIONEER CARISSA GOLD MINES, INC., A CORPORATION AND GEORGE B. COLEMER, HARRY H. HIME, SPENCER J. LEWIS, FRED H. BLUME AND HARRY S. HARNSBERGER, RESPONDENTS.

Motion for Leave to File

Petition for Rehearing
On
Petition For Writ of Certiorari
To
The United States Court of Appeals
For The Tenth Circuit

JOHN J. SPRIGGS, SR.
Petitioner and Attorney
For Petitioner, Pro Se
671 Main Street
Lander, Wyoming

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1958

No. 864

John J. Spriggs, Sr., Petitioner

v.

Pioneer Carissa Gold Mines, Inc., a Corporation, and George B. Colemere, Harry H. Hime, Spencer J. Lewis, Fred H. Blume and Harry S. Harnsberger, Respondents

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING OUT OF TIME

Petitioner moves the Court for leave to file petition for rehearing out of time on the following grounds:

1. The delay in filing the petition in the above entitled case was caused by the acts of the printer and not the petitioner.

2. The delay was beyond petitioner's control in that he had an agreement with the printer to prepare and file in the Supreme Court of the United States on or before June 14, 1958.

3. Petitioner delivered the petition to the Keith Watson Printing Company, 616 Kittredge Bldg., Denver, Colorado, on June 3, 1958.

Respectfully submitted:

John J. Spriggs, Sr.

John J. Spriggs, Sr.
Baldwin Bldg.
Lander, Wyoming

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NO. 864

IN THE SUPREME COURT OF THE UNITED STATES

October Term
1957

JOHN J. SPRIGGS, SR., PETITIONER,

v.

PIONEER CARISSA GOLD MINES, INC., A CORPORATION AND GEORGE B. COLEMER, HARRY H. HIME, SPENCER J. LEWIS, FRED H. BLUME AND HARRY S. HARNSBERGER, RESPONDENTS.

****

PETITION FOR REHEARING OF THE ORDER OF THIS COURT DATED MAY 5, 1958, DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, TENTH CIRCUIT, AS PRAYED FOR IN THE PETITION IN THE ABOVE ENTITLED CASE.

****

TO THE HONORABLE EARL WARREN, CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES:

John J. Spriggs, Sr., petitioner herein, prays that this Court grant a Rehearing of its order of May 5, 1958 in the above-entitled case denying his petition for a Writ of Certiorari, and that the Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit in the above-entitled case as prayed for in the petition filed herein on March 29, 1958.

OPINION IS REPORTED 251 F. (2d) 61

REASONS WHY THE REHEARING SHOULD BE GRANTED AND THE WRIT ISSUE.

1. IT IS NECESSARY TO SAVE AMERICA FOR AMERICANS

2. IT IS NECESSARY TO SAVE CONSTITUTIONAL GOVERNMENT FOR AMERICANS

3. IT IS NECESSARY THAT PETITIONER, A NATIVE BORN CITIZEN OF THE UNITED STATES, ONE HIGHLY PRIVILEGED BY THE AMERICAN GOVERNMENT TO SERVE AS A VOLUNTEER IN THE SPANISH-AMERICAN WAR OF '98, MIGHT NOT BE STRIPPED OF HIS AMERICAN BIRTHRIGHT AND CLASSIFIED BY THE STATE AND FEDERAL COURTS AS SOME INFERIOR CREATURE, ONE NOT WITHIN THE PALE OF PROTECTION OF THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF WYOMING, THE ACTS OF CONGRESS KNOWN AS THE CIVIL RIGHTS ACTS, THE STATUTORY LAW OF WYOMING, THE UNIVERSALLY ESTABLISHED LAW OF THE UNITED STATES SUPREME COURT, THE FEDERAL COURTS, AND THE WYOMING SUPREME COURT, AS AP-

PLIED TO ANY AND ALL OTHER CITIZENS. BUT AS SUCH INFERIOR CREATURE CITIZEN, HE IS SO UNDER-PRIVILEGED AND UNPROTECTED THAT HE IS JUDICIALLY VICTIMIZED AND COMPELLED TO HAVE HIS PROPERTY TAKEN WITHOUT DUE PROCESS OF LAW, WHILE THE COURTS DENY HIM EQUAL JUSTICE UNDER THE LAW.

4. IT IS NECESSARY THAT PETITIONER, HAVING ALLEGED A TAKING OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW, AND A DENIAL OF EQUAL PROTECTION OF LAW, AND HAVING ALLEGED A DENIAL OF THE RIGHTS, PRIVILEGES AND IMMUNITIES IN VIOLATION OF THE CIVIL RIGHTS ACTS OF CONGRESS, AND HAVING ALLEGED FACTS TO SUBSTANTIATE EVERY SUCH ALLEGATION, CONSISTING OF JUDICIAL RECORDS NOT OPEN TO QUESTION OR DISPUTE, AND HAVING SET UP THE MOST EXCESSIVE ABUSE AND MISUSE OF STATE JUDICIAL POWER, ACCOMPLISHED BY THE MOST INEXCUSABLE RESORT TO JUDICIAL BIAS, PREJUDICE, HATRED, ILL WILL, AND MALICE, THE EQUAL OF WHICH IS NOT TO BE FOUND IN ALL AMERICAN JUDICIAL HISTORY, IT IS NECESSARY THAT THE REHEARING BE GRANTED AND THE WRIT ISSUED THAT PETITIONER MAY BE GIVEN A DAY IN COURT WITH HIS RIGHT TO PRODUCE EVIDENCE TO ESTABLISH THE DEPRIVATION OF HIS FEDERAL CIVIL RIGHTS.

5. IT IS NECESSARY THAT THIS COURT AND EACH INDIVIDUAL MEMBER KEEP FAITH WITH THE AMERICAN PEOPLE UNDER THEIR OATH BOUND DUTY TO UPHOLD, SUPPORT AND DEFEND THE CONSTITUTION AND LAWS OF THE UNITED STATES AND TO ADMINISTER EQUAL JUSTICE UNDER LAW. AND THAT ON A RECONSIDERATION, THEY MAY BE CAUSED TO SEE

THE UNCONSTITUTIONAL JUDICIAL OPPRESSION TO WHICH PETITIONER HAS BEEN AND YET IS BEING SUBJECTED TO BY DEFENDANTS HEREIN.

QUESTION PRESENTED.

1. Did the Complaint state a claim on which relief could be granted? (See Complaint, R 1)

2. Did the Complaint allege a taking of property without due process of law, and a denial of equal protection of law, constituting a deprivation of federal rights under 42 USCA 1983-5-6-8?

3. There was nothing in the way of facts before the court except the Complaint. The Court must apply the law to the facts alleged. Every material allegation of the Complaint, and every reasonable inference therefrom, when viewed in the light most favorable to Petitioner is taken as true, admitted and confessed. (See cases cited par V pg 38 of Application for Certiorari) Petitioner cannot be denied a day in court to produce evidence to support his Complaint.

4. The Complaint alleged and it is admitted: Petitioner was the holder of the legal record title, as against all defendants, first by a deed to a 11/24ths interest from Tibbals, dated Aug. 22, delivered Mch. 3, 1933. This represented a contingent interest he had in case 4182 since Mch. 17, 1928, filing and service of case 4182; Second he held a deed from Executors of Spry estate, and Federal Gold Mining Company, dated Feb. 29, 1950, to any and all right, and rights of action they might have in and to the properties. (See par 2, Complaint, pg 3 R) They were prior owners,

and defendants in case 4182.

5. Neither alleged receiver, Graham or Hime, nor Pioneer Carissa Gold Mines, or any defendant had any record title, or legal claim to the properties.

6. Graham, as alleged receiver of Midwest Mines Corp., but in fact a wilful, malicious trespasser, with no possible legal claim, right, or title, or right of possession, entered into possession of the properties Mch. 3, 1933. He held possession 24½ years, leased them by void lease to Pioneer Carissa Gold Mines, which depleted them by taking out over $70,000 in mineral ores, and in Nov. 1956, defendant Judge Lewis, in case 4561 ordered alleged receiver Hime to give Pioneer Carissa Gold Mines a court deed to the properties, which was done. Out of the proceeds, alleged receiver Hime, paid himself, his attorney, the prior receiver's widow, defendant Harnsberger, illegal and basely claims.

7. Neither petitioner, nor Tibbals, record holders of title to the properties were made parties to case 4561. They were not given notice, there were no pleadings asking sale, no pleading setting up title in Hime, or necessity for sale, no pleading setting up a judgment establishing a debt in favor of Hime or any defendant. The sale was made on a report of alleged receiver Hime (See Complaint par 36 to 41, pg 17 to 22 R). Notice must be legal notice, pleadings, not merely to know. Barnett v Oakley (Wyo) 278 Pac 540.

8. It should not be asked of Petitioner, now a litigant in the Supreme Court of the United States, that he argue to this court the voidness of a judgment or order of a court that takes the property of man without making him a party,

giving him notice, when the Complaint herein sets up Petitioner's title, and lack of notice. (See Complaint pg 17-18 to end) It is the established law of this court and of federal courts, as decreed for other citizens under like circumstances, that an abuse and misuse of judicial power, whereby a citizen is denied the right to own, possess and enjoy his property, violates the 5th and 14th Amendment to the Constitution of the United States. Further that this right enures to every person as a member of the American society without looking to the constitution. We called the Court's attention to Mark, 3-27 as the Divine condemnation of the taking of one man's property by another, which is in harmony with the Ten Commandments; -Thou shalt not steal. Thou shalt not covet another's property. There is no difference to the victim, and he suffers the same injury when his property is taken in trespass, by force and arms, than when taken in criminal thievery. The loss is the same. We seem to have reached the sad plight where religion and the Courts do not mix. Had the Court of Appeals, or this Court itself taken time out to read Mark 3, the Divine Conception of the application of right and justice to this case might have been grasped and applied, and the pointed-out duty of the court as a governmental agency followed. Old Abe Lincoln read his Bible. He read this chapter. He grasped the Divine Conception as a guide for his presidential duties and course of action. As the Heavenly Master warned that a house divided against itself could not stand, so Old Abe warned the American people that a house divided against itself could not stand, and American government could not stand divided against itself, divided half free and half slave. This Court may well follow President Abe and conclude that the Constitution of the United States cannot

stand divided against itself. It cannot endure as a constitutional government with the 5th and 14th Amendments declared a protecting Bill of Rights to the specially selected few which this court in its so-called discretionary power, wills to enforce, while to Petitioner, an unfavored litigant, this court withholds the same equal protection.

Screws v U S 325 U S 91, 89 Led 1495
U S v Classica 313 U S 99, 85 Led 1368
Hodges v U S 203 U S 1
Culp v U S 231 Fed 2nd 93
U S v Jackson 235 Fed 2nd 925
Mark 3-27

The Court of Appeals denied Petitioner a day in Court to produce evidence to show the taking of his property without due process of law and a denial of equal justice under law. It excluded evidence of facts and records which would show conclusively void judgments which it wrongfully and without legal basis and contrary to facts and law adjudged to be valid and based on competent jurisdiction, all contrary to the allegations of the Complaint and admitted by defendants.

The duty of the Court of Appeals to grant a day in court on the evidence and facts is stated by this court, as the law for other citizens and the duty of the court in such like conditions to hear the evidence, is aptly stated in Oyma v California 332 U S 663:

"In approaching cases in which federal constitutional rights are asserted, it is incumbent on us to inquire-not merely whether those rights have been denied in express terms, but also whether they have been denied in substance and effect. WE MUST REVIEW INDEPENDENTLY

BOTH THE LEGAL ISSUES AND THOSE FACTUAL MATTERS WITH WHICH THEY ARE COMMINGLED".

The same declaration to a day in court is stated by the Supreme Court of Colorado, the State wherein the Court of Appeals sat in denying Petitioner a day in court, saying:

"When a citizen resorts to our courts having jurisdiction, and has alleged his right to property, he owes deference to no power that would seek to prevent him from having the ear of the court in praying for enforcements of his right."

Colorado Racing Commission v Brush Racing Assn 316 Pac 2nd 58

"Constitutional Rights Not Dependent on the Discretion of the Chancellor-

"Constitutional rights and obligations are no more dependent upon the discretion of the chancellor than they are on the discretion of the legislature.

"Rights, says the Supreme Court of the United States, under our system of law and procedure do not rest in the discretionary authority of any officer, judicial or otherwise. Re Parker 131 U S 221-33 Led 123"

First Union Trust & Saving Bank v Bernardin 69 Fed 2nd 419, further citing Wood v Guaranty Trust Co 128 U S 416, 32 Led 472

Equal protection of law; "Equal protection of law is something more than an abstract right. It is a command which the State must respect, the benefits of which

every person may demand".

State v Ellis (Ore) 184 Pac 2nd 864, citing Hill v State of Texas, 316 U S 400, 86 Led 1559.

Again in Barbier v Connolly 113 U S 27-28 Led 923, this court sums up rights under the 14 Amend this way; There shall be no arbitrary deprivation of life, liberty or property. Equal protection must be given to all under like circumstances; All persons are entitled to acquire and enjoy property; All shall have equal access to the courts for redress of wrongs; that no impediemt should be laid on one that is not laid on all others under like circumstances.

Kurtz v Pittsburgh 31 Atl 2nd 257-145 ALR 1139; "Fidelity to the fundamental law is the only guarantee of the permance of constitutional government. Since the constitution is intended for observance by the judiciary, as well as all other departments of governments, AND SINCE JUDGES ARE SWORN TO SUPPORT ITS PROVISIONS THE COURTS ARE NOT AT LIBERTY TO OVERLOOK OR DISREGARD ITS COMMANDS."

"The duty of the court is to maintain the constitution as the fundamental law of the land. The duty IS IMPERATIVE AND UNCEASING. "Quoting Marbury v Madison 1 Cranch 137-2 Led 60 Marshall, J- "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of law whenever he receives an injury. ONE OF THE FIRST DUTIES OF GOVERNMENT IS TO AFFORD THAT PROTECTION. The government of the United States has been emphatically termed a government of LAW AND NOT OF MEN. IT WILL CERTAINLY CEASE TO DESERVE

THIS HIGH APPELLATION OF THE LAW FURNISH NO REMEDY FOR THE VIOLATION OF VESTED RIGHTS."

QUESTION PRESENTED: Did the Complaint allege a taking of property without due process of law, and a denial of equal justice under law, with supporting facts alleged-as the Complaint herein does, did the Court of Appeals have power, and does this Court have power, discretionary or otherwise, to deny Petitioner a day in court to establish his Complaint by evidence?

Further, does the so-called discretionary power, to grant or deny Certiorari set up by Rule of this Court conflict with the Constitution of the United States?

It follows, that since Petitioner has set up a deprivation of his federal constitutional rights-a taking of his property without due process of law, and denial of equal justice under law, and by Petitioner for Certiorari sets up a denial of redress by the Court of Appeals, and asks this Court to perform its oath-bound duty to uphold, support and defend the constitution and laws of the United States, Petitioner is entitled to a day in Court, and in this court to secure the protection granted and commanded by the constitution and laws of Congress. The constitution cannot stand, and constitutional government endure, with the constitution divided against itself. This Supreme Court cannot speak in two constitutional languages. It cannot under pretense of judicial discretion, arbitrary and unreasonable tho it may be, speak in tones of relief and say to one citizen whose life, liberty or property is being taken without due process of law, and who is being denied equal justice under law: "This court will grant you the protection the constitution guarantees,

and decree you the relief the law provides" and in the next breath say to another citizen whose life, liberty and property is being taken without due process, and he is being denied equal justice under law: "This Court is too busy, it will not hear you or grant you relief under the constitution on an equality with other citizens." Such exercise of judicial power under guise of "discretion " would desecrate and wipe out the constitution itself, and constitutional government would vanish as a myth.

A judicial discretion that sees not the wrong inflicted, that sees not the constitutional inhibition against that wrong, that sees not the Constitutional Bill of Rights guaranteeing protection from such wrong, and that sees not the equal law for redress of that wrong, but rests on the unAmerican and unconstitutional ground that an oppressed litigant, here a white one, may be denied relief because the Court is too busy, there are too many undisposed cases on the docket, a large portion of which are those calling for protection of colored people being denied the right to vote, or swim in the Municipal pool, or attend an integrated school cannot stand. That would be law by will of the judge instead of law fixed by the constitution.

A judicial Certiorari discretion is too indefinite and not safe-guarded by legal definition. Its exercise is subject to temptation and abuse thru all the weaknesses and frailties of human nature. It might be swayed by a judge's inherent sympathy for a brother judge and an uncontrolled desire to cloth him with judicial immunity and shield him from suit for abuse and misuse of his judicial power. The piling up of too many cases is the legislative problem of the people, to

be corrected by reorganization of the Supreme Court System.

The people when shown the necessity will provide for sny emergency necessary to preserve constitutional govern - ment, by providing more Supreme judges, reorganizing the Supreme Court System by creating Supreme Court Districts with sufficient Judges geographically arranged, fashioned after the present District Court, and Courts of Appeal Districts, or whatever plan the pople may adopt.

> State v Hogan, 303 Pac 2nd 293; "Judicial Discretion- What is it? Altho it cannot be defined by hard and fast rule, it means a sound discretion which is not arbitrarily exercised, but with regard to what is right and equitable under the circumstances and law and which is directed by the reasoning conscience of the judge to a just result."

It follows, that if the Complaint alleges a taking of property without due process of law, and a denial of equal justice under law and the Court of Appeals has denied Petitioner redress for deprivation of those federal rights, and Petitioner has asked Certiorari by this court to review the judgment of the Court of Appeals in accordance with Sec. 1254, Title 28 USCA, which provided that judgments of the Courts of Appeal MAY be reviewed by the Supreme Court by Certiorari, it is both the spirit and letter of that law that MAY means SHALL when a Complaint stating a claim for relief has been presented. The Complaint does state a perfect claim, with all material allegations and all reasonable inference therefrom, viewed in the light most favorable to Complainant admitted and confessed. Every member of this

Court is oath-bound by three oaths, First, to uphold, support and defend the constitution and laws of the United States; Second, Not to decide thru bias or other unjudicial motive; and Lastly, the oath required of the last federal judge, not to judicially legislate, which binds the judge not to ignore, twist or modify 42 USCA 1983-5-6-8 but sustain the relief therein provided for deprivation of federal civil rights.

The duty of this court under the record herein presented to grant the rehearing, and issue Certiorari as prayed for is imperative and judicially mandatory.

QUESTION PRESENTED: Did the Complaint allege title in Petitioner, legally deraigned? And was this title subject to question or attack in the subsequent collateral court in cases 4561, or 50 Wyo 524, or by judgment of the Court of Appeals below?

The Complaint, par 4-to 19, pgs 4 to 12, sets up such perfect title legally deraigned and not subject to attack in the subsequent collateral cases 4561, or 50 Wyo 524, or the Court of Appeals, or this court itself. The Complaint sets up that March 17, 1928 Tibbals filed and served case 4182 in Fremont County Wyoming District Court to foreclose his First Trust on the properties. Such trust is equitable ownership, superior to a First Mortgage. In Oct 1929 the Wyoming Supreme Court, 40 Wyo 524, established the First Trust at $17,500. and interest at 7% from April 29, 1930, thru judgment on the mandate in case 4182. Petitioner had a contingent interest in the suit and properties from March 17, 1928, which was reduced to deed, dated Aug 22, 1932, delivered

March 3, 1933 of an 11/24th interest. He later held a deed, dated Feb. 20, 1950, from the Spry Executors, and Federal Gold Mining Company, defendants in case 4182, of any and all rights, claim or title, and all rights of action they might have in and to the same properties. (See R par 1, pg 2; par 21, pg 13 R). Tibbals was enjoined from getting execution in subsequent litigation, cases 1667 and 1676 of the Supreme Court followed, and 4623 of the District court.

Sec 3-907 Wyo, and the universally established law of land, declared and established by numerous decisions of this court, the federal courts; and state supreme courts including Wyo. Supreme Court, Bank of Chadron v Anderson, 6 Wyo 518, barred and excluded any subsequent third party--here the subsequent Midwest Mines Corp., as subsequent lessee, and its receivers, Graham and Hime--from acquiring any adverse interest or right in the properties as against plaintiff Tibbals, which same law enures to Petitioner, grantee of Tibbals.

The law applicable thereto in said statute, and the universal law of the land, is set out in par 4-5 and briefly stated as follows: That from date of service of case 4182, which was March 17, 1928, the properties were in the prior, sole, exclusive jurisdiction, custody and control of the court in case 4182; that this exclusive jurisdiction of the court in that case continued on until the purposes of the suit were exhausted, by final judgment, execution, sale and deed, confirmation of sale and deed. And then on in aid of jurisdiction to protect the title of the purchaser at the sale in possession.

Further, that during all this time, no subsequent collateral court, or the same court in a subsequent collateral

case, has any power, jurisdiction, custody or control over the same properties, or power or jurisdiction to interfere with, obstruct, delay, modify, defeat or molest the process of the First Court -here 4182- And that any attempt to do so is absolutely VOID.

In par. I + II, pgs 28-29-30 of the petition for Certiorari, the many decisions of this and other courts, including Wyoming-Bank of Chadron v Anderson 6 Wyo 518, are set up, and in these decisions, this court and the other courts state the reason why this is the law, and why it must be law, namely:

IT IS NECESSARY THAT COURTS MAY ACCOMPLISH THE OBJECTS FOR WHICH COURTS ARE CREATED:

IT IS NECESSARY TO GIVE THEIR JUDGMENTS VERILTY, FORCE AND EFFECT;

NECESSARY TO PUT AN END TO LITIGATION, TO PROTECT LITIGANTS, PROTECT TITLES:

NECESSARY TO MAINTAIN THE CONFIDENCE AND RESPECT OF THE PEOPLE IN THEIR COURTS:

NECESSARY FOR ORDERLY PROCEDURE AND TO AVOID CONFLICTS AND CONFUSION IN COURTS:

NECESSARY FOR THE GENERAL PEACE AND WELFARE OF SOCIETY:

It is not necessary that Petitioner argue to this court the universally established law of this and every other court to the effect that the final judgment of a court of competent

jurisdiction is final, absolute, res judicata and CONCLUSIVE between the parties, privies, and those claiming under such parties or privies. In Voorhees v Bank 10 Peters 450, set up par I, pg 28 of petition for Certiorari, this court states the law that final judgments of such courts, are res judicata and CONCLUSIVE and neither the judgments, nor property acquired at such sales, can be subjected to attack or relitigation in any subsequent collateral case between the parties, or privies, or those claiming thereunder, declaring that if that were not the law, litigation would never end, and the judgments of the Supreme Court would for the same reasons be subject to attack and vacation by SOME JUSTICE OF THE PEACE.

It is then the universally established rule that the final judgment sale, deed and confirmation of sale and deed to Tibbals Oct 15, 1932, in the ancillary case 4623, and the final judgment in case 4182, entered under the mandate of the Supreme Court in 40 Wyo 524 are all final, absolute, res judicata and CONCLUSIVE in favor of Tibbals, and Petitioner his grantee, and holder of the contingent interest aforesaid, as against the adverse parties, and privies--the Midwest Mines Corp. was privy,-and Graham and Hime, alleged receivers of the Midwest Mines Corp. and against all defendants herein who claim unler the Midwest Mines Corp., privy aforesaid.

And likewise, it follows that the subsequent court, 4561, and 50 Wyo 277 had no jurisdiction whatsoever over the same properties, and no power or jurisdiction to relitigate the final judgment sale, deed, and confirmation of deed to Tibbals, grantee or of petitioner.

QUESTION LITIGATED IN 4623; The Midwest Mines Corp., the subsequent lessee, was privy of defendants in case 4182-40 Wyo 524, case 4623. It was actual litigating party, supplied costs, injunction bonds, attorney fees. It was precluded by the judgment, sale and deed to Tibbals in 4623. Its receiver, Graham and Hime, were also precluded by the same judgment. He was not a necessary party to case 4623. He had no rights therein to protect.

Vener v Denver Union Water Works, 90 Pac.

On application of Graham, receiver, the court in case 4561, the receivership case, and in case 4623 made an order directing him to intervene and set up his claims. He did so. His rights were litigated. (See par 15-6-7-pgs 10, 11 , Complaint. The court rightfully adjudged he had no claims or interest whatsoever. That adjudication is final, conclusive. The court expressly excluded the receiver from any claim of surplus over the Tibbals trust, in this express adjudication in the final judgment. After providing for sale and payment of the First Trust, the court decreed; "--and the remainder, if any there be, shall be paid to the Clerk of this Court for plaintiff (FGMC), or for such distribution between the plaintiff and the estate of John C. Spry,deceased, as the Court may afterwards determine in case of presentation of adverse claims."

The Wyoming Supreme Court in the subsequent collateral case, 50 Wyo 277 quoted this express portion of the final judgment, but cut out the heart by omitting these words-- "and the estate of John C. Spry, deceased" and made the judgment to apply to claims of the receiver. This trick of

the court is an exhibition of the bias, prejudice, hatred, ill will and malice that actuated the court in the entire case, 50 Wyo 277.

What did the receiver do next? He filed in case 4623 his written ratification of the judgment and asked the court to make the sale to Tibbals and confirm the same without further notice. (See par 19, pg 11 R-)

ANOTHER QUESTION LITIGATED IN 4623 denominated FRAUD. The court in 50 Wyo 277, by judicial assertion created two false, untrue and basely premises for jurisdiction, namely; 1 There was fraud against the receiver rendering the sale in 4623 VOID 2 The properties were in custody of law in the receivership, rendering the sale VOID. The properties were in custody of law in the receivership, rendering the sale VOID. The matters which the court called FRAUD had been expressly litigated in 4623. Briefly stated, to escape criticism of PROLIX, Tibbals was advertising the sale under the final judgment in 4623 for Oct 15, 1932, the date fixed by the court. The receiver had been expressly adjudged -No Claims- He was down and out. The defendant owners had tried during all the extended litigation to find a buyer, but failed. Tibbals would be compelled to bid in the properties for his judgment. That meant the owners would get nothing. The sale was by strict foreclosure without right of redemption after sale. The receiver and defendants contacted a mining man named Quinn, who agreed to take an option to purchase IF THE MINE STOOD THE TEST. He could not make the test before time fixed for sale. They all asked Tibbals to grant them a favor, extend the time 30 days. Three options were drawn up. The Quinn;Tibbals option gave

Quinn a 30 day extension to purchase the Tibbals judgment, if exercised before sale, or the properties acquired at the sale, if exercised within the 30 day extension. Consideration was payment in full of Tibbals judgment, plus $5,000. stipulated by the parties to be payment of damages sustained by Tibbals in the injunctions restraining execution. Tibbals made these requirements: Nothing in the option should interfere with his sale, or his title at the sale. The option must be reduced to writing, signed by the adverse parties, acknowledged before a Notary, submitted to and approved by the court making the sale by his written order in the case, and then a further ratification of the court's order and the option agreement. The attorneys of the different parties working together, all in the best of faith, for their mutual good, formulated the option, submitted it to the court, and by his written order, the court approved the order. The other parties all filed their written ratification, asked the court to make the sale to Tibbals in accordance therewith. In drawing up the option a question arose as to how to meet the contingency of some third party appearing at the sale and bidding $1. or so over the Tibbals judgment and thereby deprive the owners and receiver of substantial sums they would realize thru the option. In the Quinn-Graham option, if the mine stood the test, Quinn would pay Graham $34,500. which was purely a gift. The receiver had been adjudged-No Claims-. He had no interest in the properties, but he could cause litigation as a nuisance. By the Quinn-Defendant Owners option if the mine stood the test, and Quinn took up the Tibbals option, he would pay the owners the difference between the Tibbals option, some $21,000; plus the Graham option, $34,500. and

$125,000. which would give the owners the substantial sum of around $60,000, It would have been an abuse of discretion had the court not approved the option, for it was his duty to aid the defendant owners to realize the best possible sum out of the court sale. Tibbals made and placed in escrow his deed. Quinn made the test. The mine failed. Tibbals gave two different extensions of time, 30 more days each, and urged the defendants, and also the receiver to take up his option. For his kindness to the defendants and receiver, he is branded a FRAUD. The attorney for the receiver appeared at the sale, and to make it a success, put in a bid for the reason that there should be two bidders at the sale. The branding of Tibbals as a Fraud was the most judicially absurd, oppressive and tyranical act any court could perpetrate. Under the option, Tibbals was to bid such sum as the other parties directed to prevent a disinterested third party from depriving them of their benefits under their separate options. If some third party did appear, Tibbals would keep on bidding under their directions, until told to stop. It could have been possible had some third party really wanted the property for defendants to have the bid run up to such sum as would give them a fair surplus over the Tibbals judgment, which the clause of the judgment above quoted, would be paid into court for their benefit.

At any rate, to say that Tibbals could commit a fraud on Graham or defendants, by acting under their directions, and bidding as they directed, would be to say that Graham could commit a fraud on himself, by having Tibbals bid as he directed.

There was no semblance in fact for the charge of fraud; there was no semblance in law for the charge of fraud. The whole matter had been submitted to the court for his approval or disapproval as his judicial discretion directed. This court has by the leading decision of fraud in judicial sales, settled the law in Throckmorton v U S 98 U S 86, repeatedly cited and quoted by this and other courts, making judicially absurd and ridiculous the Wyoming Supreme Court's decision in 50 Wyo 277. The law is settled, that a judicial sale is not subject to attack for fraud, unless it be EXTRINSIC fraud as distinguished from INTRINSIC fraud. Extrinsic fraud is defined as something that was not before the court, or could not be reasonable dilligence have been placed before the court. It must be something that was not passed on by the court. It must be something that the successful party did to prevent the unsuccessful party from presenting his case and having a day in court, such as inducing him not to appear by reason that the case will not be called up for trial; or that his attorney by collusion sold him out. The law is that without positive evidence of EXTRINSIC fraud there is NO JURISDICTION in the court to relitigate or attack a sale.

It follows that the Court of Appeals, in holding that the court in 50 Wyo 277 WAS A COURT OF COMPETENT JURISDICTION to relitigate the final conclusive judgment in case 4623 committed such error as has caused Petitioner to be deprived of his property without due process of law, and denied equal justice under law. Petitioner is denied a day in court to establish his complaint by evidence.

SECOND FALSE PREMISE JUDICIALLY ASSERTED IN CASE 50 Wyo 277, namely the sale in 4623 is VOID because the properties were in custody of law in receivership in case 4561- is so judicially absurd as to be unworthy of consideration by this or any court.

Petitioner's right to have litigation end, and to be free from litigation with a stranger in title, who is a wilfull, malicious trespasser is violated under 42 U S C A when he is compelled to relitigate this question herein.

What kind of a receiver and whose receiver was Graham and Hime? The Supreme Cou f in 50 Wyo 277 says; The Midwest Mines Corp became insolvent, and Graham was appointed its receiver so the creditors of the Midwest lessee could be protected.

Point 1 - The Midwest Mines Corp., as a subsequent lessee, was privy of Spry Executors and Federal Gold Mining Co., defendants in case 4182, 40 Wyo 524-case 4623. As such subsequent lessee it was barred and excluded by Sec 3-907 Wyo State, and by the universally established law of the entire land, and of Wyoming, Bank of Chadron v Anderson, 6 Wyo 518, hereinbefore cited, from any adverse claim against Tibbals, grantor of Petitioner. Hackett v Linch (Wyo) 103 Pac 2nd 164; Baker v Leavitt 153 Okla 1099; Mass Bonding Co v Knox 220 N C 725, 18 SE 2nd 436.

Point 2 - Such receiver stands in the shoes of Midwest Mines Corp., and has no rights superior to the insolvent. Barber v Reina Nash Co. (Wyo) 260 Pac 2nd 934; White v Ewing 159 U S 36; Am Jur Vol 45, pg 129, sec 156; Re, K T Sandwich

Shop 34 Fed 2nd 962; Union Nat Bk v Bk of K C 136 U S 223, Citation could go on without limit.

Point 3 - If the court in case 4561, the subsequent collateral case, attempted to interfere with the prior, sole exclusive jurisdiction, custody and control of the properties in the prior cases, 4182-4623, 40 Wyo 524, it acted without jurisdiction, and its judgment is VOID.

Point 4 - The Prior Court, 4623, with complete jurisdiction, expressly adjudged the receiver had no claims whatsoever. The receiver ratified, asked the court to make sale, deed and confirm sale to Tibbals, grantor of Petitioner. That adjudication is conclusive, and was conclusive on the court in 50 Wyo 524. Any attempt to relitigate is without jurisdiction, and VOID. (Complaint par 19, pg 11 R)

Point 5 - The court in 4561 did not attempt to appoint Graham receiver of the fee simple title to the properties. That was in the prior sole exclusive jurisdiction of the court in 4182. It confined the RES of the receivership to the property the insolvent owned, its mining equipment, and at best a leasehold which lease expired Oct 19, 1932. (Complaint par 20, pg 12 R)

Point 6 - On application of Graham, receiver, TO CLOSE THE RECEIVERSHIP, the court in case 4561 sold all the RES, the mining equipment, and the unexpired 6 weeks term of the lease, IN FULL SATISFACTION OF THE CLAIM OF PLAINTIFF MARRIN, AND ALL OTHER CREDITORS OF THE MIDWEST CORP, AND ALL RECEIVER SHIP COSTS, EXPENSES, AND DEMANDS WHATSOEVER. (Complaint - par 19-20-21 pg 12-13 R) This in fact closed the receivership.

There were no longer any creditors. Simmons v Parrent (Wyo) 256 Pac 2nd 105. Judgment for plaintiff ends a receivership—Very v Watkins 64 US 469, 16 Led 522. The receiver sold all the RES in full satisfaction of plaintiff's claim, and all other creditor claims, costs and expenses. (Complaint par 19-20 pg 12 R)

A receiver of a tenant has no more rights than the tenant, Vincent v Natural Drug Co., 3 Fed 2nd 504. Any tenant or lessee is required to turn back the properties when the lease expires. This lease expired Oct. 10, 1932.

A receiver has a reasonable time to adopt or reject the lease. Humphrey v Quincy Ry 145 US 82, 36 Led 632; Blossom v Milwaukee 1 Wall 635, 17 Led 673; Graham refused to adopt. He filed in court his report that the lease was so far in default he could not comply with its terms. The court by order approved his report. That eliminated the lease from the receivership.

A receivership cannot be unreasonably prolonged. If the parties do not provide for discharge the court will. Mitchel v Lay 60 Fed 2nd 941; Platt v Philadelphia 65 Fed 872

What is such receiver as Graham pretended to be? He was a mere custodian, pendente lite, to hold to see if plaintiff was entitled to claims. Here the plaintiff was paid in full by sale of the RES, he had no further claim to anything. Such receiver does not acquire any title or right of possession to the property. Re, Greling Realty Co. 74 Fed 2nd 734; Grant v Phoenix Mutual Life, 106 US 429; 45 Am Jur, pg 125, sec 151; Re, Burgh 7 Fed Sup 184; US Mortg Co. v Mo K & T Ry 269 Fed 497; Union Nat Bk v Bank of K C

136 US 346. He does not represent the justiciable interests, he is a mere custodian, Whitnet v Hardman 54 Pac 2nd 1065; Union Nat Bk v Bk KC 136 US 346l US Mtg Co v K & T Ry 269 Fed 497.

He had not title or right of possession. While some courts inadvertently refer to it as possession, it is only custody. Crowley v Ickes 83 Fed 2nd 573; Penn Steel Co v N T City 198 Fed 721; Taylor v Sternberg 293 US 475, 79 Led 599; Re, Southern Metal Products Co 26 Fed Sup 666.

The receiver could have no rights superior to plaintiff. A fountain cannot rise higher than its source. This plaintiff was paid in full by sale of the RES Whiterspoon v Choctow 56 Fed 2nd 984. Further title and possession were judicially quieted against plaintiff, in the following judgment in case 5090, of the District Court of Fremont County, entitled, Barney N. Tibbals and John J. Spriggs, plaintiffs vs J. H. Marrin, defendant. (Marrin was plaintiff in 4561)

> "It is considered, ordered, adjudged and decreed by the court that defendant J. J. Marrin has no legal or valid claim whatsoever in and to any of the properties described in the petition; and that defendant be and he is hereby debarred from forever hereafter asserting any claim of right, title, interest or demand whatsoever in and to any of the properties described in the petition of plaintiffs." (It was the same properties deed to Tibbals by sale and deed in 4624)

The least expired by its own terms Oct. 10, 1932, five days before the sale of Oct. 15, 1932 in 4623. The properties, the fee simple title of the owners, Spry and Federal

Gold Mining Company never were, and never could be in receivership in 4561. The court in 4561 never did appoint Graham receiver of the fee simple title of the owners. It confined its orders to the property of the Midwest lessee, namely its personal property, the mining equipment and the unexpired term of the lease, the property it owned and which could be sold to pay its debts. In selling the RES (Complaint par 19, pg 12) the court kept within the law that was restrictions on the lessee and the court, namely Sec 3-907, and the universally established law of the land on prior jurisdiction in the court heretofore set up, and established in the decisions of this and other courts. (See par I-II of Petition for Certiorari, pg 28-29-30) The taking of property without due process, and denial of equal justice began in the subsequent collateral case, 50 Wyo 277, when the Supreme Court judges took offense and penalized Petitioner for becoming a candidate for Supreme Court Justice. It was in this last case that the Supreme Court by judicial assertion sought to create jurisdiction to relitigate and overturn the final CONCLUSIVE judgment, sale, deed, and confirmation of sale to Tibbals in 4623, by falsely asserting that the properties on Oct. 15, 1932, were in the custody of the court, in receivership, in 4561. That false judicial assertion is so absurd as to shock the conscience of this court. That judgment was actuated by the bias, prejudice, hatred, ill will and malice of the court therein.

Ex Parte Owen 258 Pac 1 c 779–"Public officers hate ooponents. ALL HISTORY PROVES that public officers in any government, when they are engaged in a struggle to retain their places, BECOME BITTER AND REVENGEFUL, AND HATE THOSE WHO OPPOSE THEM–EVEN IN

A MOST LEGITIMATE WAY–WITH A RANCOR WHICH THEY NEVER EXHIBIT TOWARD CRIME."

It is likewise true that any person, litigant or otherwise, who takes issue against the claim of JUDICIAL IMMUNITY OF JUDGES FROM SUIT, incurs the ill will of too many distinguished judges and to his great disadvantage. The Constitution of Wyoming Sec 8 Art (See page 46, Petition for Certiorari) guarantees every person that Courts shall be open to all, and justice shall be administered without sale, denial or delay. That excludes bias and prejudice. If a court renders an opinion with a member disqualified, the decision is of no force–IS VOID, the same as no judgment and as if never rendered. Knouse v Nimocks 66 Pac 2nd 438.

(See Complaint par 2 pg 3 R; and par 35, pg 17 R; and par 40, pg 20 R; and par 35, pg 17 R)

It must be apparent that the Supreme Court never intended that the law meted out to Petitioner in 50 Wyo 277 should ever be applied equally to other citizens under like circumstances. It would put every bank out of business. No property owner would dare rent property. The State of Wyoming would lose all its valuable oil, mineral and agricultural lands.

Take the banker, he brings suit to foreclose a First Mortgage. The Supreme Court establishes his First Mortgage, decrees foreclosure. Under the mandate, the lower court forecloses, sells and deeds the land to the bank. The First Mortgage merges in the judgment, is satisfied, and the land bought in represents and takes place of the

First Mortgage. Suppose a like case, while the bank is up in the Supreme Court, the mortgagor gives a lease on the mortgaged lands. The lessee goes broke, a receiver is appointed. The lands are free from any subsequent adverse interest after service of foreclosure suit filed and served by force of statute, Sec 3-907, and from the universally established law, including the law of Wyoming, Bank of Chadron v Anderson, 6 Wyo 518. The final judgment and deed are free from subsequent litigation. The RECEIVER SELLS ALL THE RES, in full satisfaction of the claim of plaintiff creditor, and all other creditors. Six months after the foreclosure sale and deed to the banker, that receiver, after the lease itself has expired, goes back and takes possession of the banker's land. The Supreme Courts hold him in possession 25 years, during which time the receiver pays no rent, but all the while he depletes the property, and then such trespassers claim title, and the court sustains his claim of title, directs that trespassing receiver issue a court deed, which he does, and the banker is deprived of his land. No bank could continue in business.

Take the property owner, say the State of Wyoming itself. It owns and leases valuable oil, mineral and agricultural lands. It gives an oil or mining company a four year lease. The lessee goes broke, a receiver is appointed. Under the law, the receiver would either adopt, or reject the lease. If he adopted, he would pay the rents, comply with the lease, and at end of the term, turn the property back to the State. The receiver sells the mining machinery and equipment IN FULL SATISFACTION OF THE CLAIM OF PLAINTIFF CREDITOR, AND ALL OTHER CREDITORS and all costs. Then 6 months after the lease

has expired, that ALLEGED RECEIVER, he is in fact no receiver, goes back, takes possession of the lands of the State which were included in the lease, and over the protests of the State, the Supreme Court holds that trespasser in possession 25 years, while he pays no rent, all the while depleting the property, then he claims title, and the Supreme Court directs the trespasser to sell the valuable lands of the State. Such law is judicially absurd.

Another absurd declaration of law the Supreme Court declared for Petitioner and Tibbals and which could not be applied to other citizens equally is this. The Supreme Court in 59 Wyo 277, declared that at the judicial sale by the receiver in case 4561 (See Complaint, par 19-20, pg 12-13), wherein the property sold was specifically described as the mining equipment, and the six weeks unexpired term of the lease, the creditors bought in this RES, taking title in the name of Graham, as Trustee for Creditors. The effect of the Court's decision is that if you purchase a lease, you get fee simple title. Then the court holds this purchaser, Graham, Trustee for Creditors, who bought the unexpired six weeks term of the lease in possession 25 years after the lease expired, during which time this trespasser depleted the property, pays no rent, claims title, and sells the property, and the Court judicially ap proves.

QUESTION: If at this receiver's sale, Graham, Trustee, purchased the six weeks unexpired term of the lease, what did he purchase? Answer: He purchased the six weeks unexpired term of the lease. What were the obligations of lessee itself, and what were the obligations of purchaser

Graham, Trustee for creditors. Answer: Pay rent during the coming 6 weeks, and when the lease expired Oct 10, 1932, turn the property back to lessors, Spry estate and Federal Gold Mining Company. But what did the Supreme Court decide? It held the purchaser of the unexpired term of the lease in possession 25 years after the lease expired, confirmed the trespasser's claim of title, directed the trespasser to sell the fee simple title to another co-trespasser. If that is to be EQUAL LAW AND JUSTICE, the monstrosity of the evil of such law is inconceivable. It would open up a new and most profitable judicial field to judicially licensed gangster racketeering ever temptingly offered the underworld. Come to Wyoming, attend a receiver's sale, buy a 6 weeks unexpired term of a lease, on some million dollars premises, stay in possession 25 years after the lease expires, deplete the property, claim ownership, and the Wyoming Supreme Court will give you fee simple title. If the property owners complain to the federal courts that their property is taken without due process of law, and they are denied equal justice under law, the Court of Appeals will say -NO CLAIM- and on Petition for Certiorari, the Supreme Court of the United States will say -NO COMMENT, Cert. dn.

When defendant Judge Lewis made his order in case 4561, in 1956, directing alleged receiver Hime to sell Petitioner's property to Pioneer Carissa Gold Mines, Petitioner asked the Supreme Court, defendant Judge Blume, presiding, to issue Prohibition and prevent the abuse and misuse of state judicial power by defendant Judge Lewis, and to prohibit him from holding trespassers in further possession of his properties and from selling same to Pioneer Carissa Gold

Mines, a co-trespassing defendant, setting up such as the taking of property without due process of law, and a denial of equal justice under law, and that the court was without jurisdiction over the properties or over petitioner, and that the order to sell was VOID. (See Complaint, par 36-7-8-9-40-41-pg 17 to 22 R). Petitioner shows the court that it was the duty of the Supreme Court, defendant Blume presiding, to issue probition in the exercise of its supervisory power and constitutional authority and protect Petitioner from said unlawful taking of his property and denial of equal Justice. At the hearing among authorities from this and other courts to sustain Prohibition, Petitioner read Mark 3-27. That said Supreme Court denied Prohibition and in his biased, prejudiced, hatred, and malice, the Court, defendant Blume presiding, sought to intimidate Petitioner, and bring about his surrender to judicial oppression and tyranny by this threat: "Any further attempt to try to claim ownership of the foregoing property is a grave abuse of judicial process." (See Complaint, par 40 pg 20 R) Petitioner well understood the bias prejudice, enmity, hatred and ill will Judge Blume nourished in his heart for Petitioner and believing a fair hearing and trial before Judge Blume was impossible, Petitioner courteously asked Judge Blume to call in some other Justice but the Judge refused and sat and adjudged the sacred constitutional rights of Petitioner while actuated by said bias, prejudice, hatred, ill will and malice, and directed Judge Lewis to proceed in case 4561 and sell the property of Petitioner to Pioneer Carissa Gold Mines. (See Complaint par 35 p g 17; and par 41, pg 21 R)

Petitioner well understood from past experience with defendant Blume and the Supreme Court and believed that if Petitioner sought further redress for the wrongs against him and his property, Judge Blume, and the court over which he was presiding, would persecute him with the drastic weapon of contempt or other punishment.

Petitioner asserts his constitutional right as an American citizen to resist the further withholding of his property without due process of law, and the same constitutional right to continue to seek redress in the courts of his state for the denial of his constitutional rights to own, possess, and enjoy his property. He asserts his American right to interpret the Divine Assurance of the Master in Mark 3-27: "No man can enter a strong man's house and spoil his goods, except he will first bind the strong man; then he will spoil his goods" as being condemnation of trespass inflicted on Petitioner and which he should continue to resist until he is bound up beyond resistance. Further Petitioner remembers the electrifying American retort by the American officer, who during the Battle of the Bulge, when being cut off from all support from the main body of his army, he found himself and his few comrades surrounded, and confronted with the warning threatening command of the German General to this effect: "You are surrounded and cut off from assistance. Our machine guns are leveled on you. You are helpless to resist. Surrender to Hitler, and save your lives, or else-" To this command of surrender to Hitler, his oppression and tyranny, the American soldier gave this American reply: "What, bow and surrender to Hitler and tyranny--NUTS TO YOU!"

This threat from the Supreme Court of Wyoming, and defendant Judge Blume, warning Petitioner that should he stand on his constitutional right to seek redress against further judicial oppression, and further denial of equal justice is a threat of reprisal against the exercise of the constitutional right to further protest the taking of his property without due process of law, and violated 42 U S C A, 1983-5-6-8. Petitioner, along with his co-litigant Tibbals in 50 Wyo 277 and his co-litigant Anna Tibbals have been oppressed thru a taking of their property without due process of law, and denial of equal justice to an intolerable degree, sufficient to arouse the people to a justifiable wrathful retaliation against their oppressors. The American people were horrified at the brutal oppression, persecution and tyranny of dictator Hitler directed against the unfortunate Jews in Germany. This unrestrained tyrant seized their homes and confiscated their property and to their cry for mercy and justice, they received the fiendish answer, "YOU SWINE-away to the concentration camp, torture and death. "A judicial tyrant is the most dangerous and most oppressive of all for he wields the judicial power and authority entrusted to him to prevent oppression and injustice.

Petitioner is not required to litigate with this alleged receiver, a stranger in title. To litigate all strangers, litigation could never end. May v Preston, (Wyo) 16 Pac 2nd 35. Nor is he required to litigate the many other judicial absurdities embodied in 50 Wyo 277, and cases subsequent to the final sale and deed in case 4623. The Court of Appeals, in referring to these subsequent litigations as "courts of competent jurisdiction" and "the rights of Petitioner were

determined against" forces on Petitioner PROLIX briefs to point out such absurdities in defense. The complaint alleges plaintiff Marrin in case 4561 was paid in full by receiver's sale. He died in 1943, and there was no revivor, and no plaintiff since that date, none when Judge Lewis sold Petitioners property. (Complaint par 13 pg 9) And likewise the corporate franchise of Midwest was forfeited in 1933. There never was a judgment establishing a debt for Marrin in 4561; nor judgment establishing a lien, or decreeing foreclose, with right of redemption, as required by Wyo lien statutes. (Complaint par 13 pg 9 R) Wyoming statutes provide AN EXCLUSIVE procedure for attacking a judgment after term. The Court 50 Wyo 277 ignored this exclusive procedure. The defendants in case 4182-4623 were not made parties in 50 Wyo 277, yet their final judgment is attacked without notice.

What did the Court of Appeals have for a basis in saying 50 Wyo 277 was a court of competent jurisdiction? What is jurisdiction? It cannot be created by judicial assertion. It cannot be created by consent of the parties. It cannot be waived by the parties. It can only exist when conferred by the constitution and laws creating the Court. Mandfield v Swam 111 U S 379, 28 Led 462.

The District Court of Fremont County Wyo is the same as a District Court in Colorado; Hill v Benevolent League of Colorado 295 Pac 2nd 231--"The jurisdiction of the District Court is fixed by the Constitution, which gives it original jurisdiction in all cases of law and equity, and such appellate jurisdiction as may be conferred by law (from J P

Courts) The appellate jurisdiction does not extend to a review of the decisions and judgments of courts of concurrent jurisdiction or a judge of that court."

Harris v Hudson 250 Pac 533 says such is absurd, hopeless, intolerable, disorder and destroys the law itself. So to permit the District Court of Wyoming, in the subsequent collateral case, 4871, which is 50 Wyo 277, to relitigate the final judgment in the prior case 4623, 40 Wyo 524, is to permit the subsequent judge to accuse the prior judge of incompetency, and brand him as guilty of FRAUD, for he approved the option, the manner of bidding, made the sale and confirmed it. If there was any fraud, it is the court's fraud. During all these years of oppressive litigation, Petitioner always denied equal justice, has been driven from court to court, hoping to find a Temple of Justice wherein he can hear the voice of an American judge decreeing equal justice under law, only to find the court doors locked, a sign up- "no day in court-no comment" while thru the key hole is seen the wilful malicious trespasser enjoying the welcoming carresses of the court and shedding crocodile tears of joy on the judicial decrees sustaining him in his trespasses.

It necessarily follows, that under constitutional and established law, the court in 50 Wyo 277 acted without Jurisdiction, in attempting to relitigate the final res judicata, CONCLUSIVE judgment, sale and deed to Tibbals in case 4623, under mandate of 40 Wyo 524. All subsequent litigations construed to uphold the VOID judgment in 50 Wyo 277, are likewise void. A judgment contrary to an express statute, 3-907 is VOID, without jurisdiction State Ex Rel v District Court (Wyo) Blume Judge, 33 Wyo 281, 238 Pac 545.

A VOID judgment is not a judgment, it is NO JUDGMENT,- entitled to NO RESPECT. All proceedings thereunder are VOID. IT cannot CREATE OR IMPAIR RIGHTS. No one can JUSTIFY OR DEFEND THEREUNDER.

Olson v Leith 33 Wyo 281, 257 Pac 2nd 342
Wurnicke v Leith 61 Wyo 191-157 Pac 2nd 274
Bank of Commerce v Williams 52 Wyo 1,69 Pac 2nd 525.

No Court can take the property of one man and give it to another. It violates the dur process clause of the constitution.

Fayweather v Richie 195 U S 300
Osborne v Michelson 13 Wall 654, 20 Led 689

The affirmance of a VOID judgment by the Supreme Court adds nothing to it. The Supreme Court cannot breathe life into a corpse.

Latimer v Vanderlice 178 Okla 501, 62 Pac 2nd 1197
Whitaker v Dillingham 152 Pac 2nd 371
King v Superior Court 12 Cal App, 56 Pac 2nd 268
Hine v Morse 218 U S 493

The Court of Appeals refers to different VOID judgments, attempting to relitigate the final conclusive judgments, and sustaining the wilfull, malicious trespasser in taking Petitioner's property without due process of law, and referring to them as COURTS OF COMPETENT JURISDICTION. The answer thereto is found in the very first multiplication table taught to the kindergarten class:

1 X 0 - 0	One VOID judgment is NO JUDGMENT
2 X 0 - 0	Two time a VOID judgment is NO JUDG - MENT
3 X 0 - 0	Three times a VOID JUDGMENT is NO JUDGMENT

And so on. Repeated affirmance of a VOID judgment is still NO JUDGMENT.

Snare & Trieste v Freidman 188 Fed 300: "It is beneath the dignity of Federal Courts and a reproach on jurisprudence for a Federal Court to decide a case according to the decisions of a State Court when convinced those state decisions are wrong in principle."

A single decision of a State Court which departs from the whole course of the decisions of that State will not be followed.

Hardin v Jordan 140 U S 371, 35 Led 428
Gibson v Lyon 115 U S 439, 29 Led 440

It follows: It is established beyond question or dispute, and by proper Complaint, and allegations therein, all admitted and confessed:

1. Petitioner owned real property, acquired thru a perfectly complete, valid, legally deraigned title.

2. No defendant had any legal or valid claim or right, title, estate or right of possession thereto.

3. Petitioner was deprived of the right to own, possess and enjoy that property.

4. The court in case 4561, without any jurisdiction and by VOID order and judgment caused defendant Hime, claiming as receiver of Midwest Mines Co., to sell and deed Petitioner's property to defendant Pioneer Carissa Gold Mines, in 1956.

5. That this was done in violation of express Wyo. statutes, and contrary to the established law of Wyoming, as applied to other citizens under like condition. And is a taking of property without due process of law, and is a denial of equal justice as accorded other citizens under like conditions.

QUESTION PRESENTED: Does this Court have power to divide the citizens into different classes, one class protected and accorded equal rights under the Constitution and laws of the United States, while Petitioner is placed in an inferior class and not accorded the same equal rights and protection? And can Petitioner be denied a day in court to produce evidence to support his Complaint herein?

There are different defendants. One defendant, Pioneer Carissa Gold Mines has taken and now holds Petitioner's property under Void judicial orders and judgment.

The defendant judges, without a pleading setting up immunity, have been adjudged immunity by the court SUA SPONTE. Petitioner has been denied equal protection of the Federal Rules of Civil Procedure, in addition to being denied the equal protection of the final, res judicata, conclusive judgments of case 4182-4623, 40 Wyo 524, and has been discriminated against by being denied the equal protection of Sec 3-907 and other Wyoming statutes, and the established law of the land, and final judgments of the many decisions of the Wyoming Supreme Court as declared for other citizens under like conditions. Rehearing should be granted and the Writ of Certiorari issued.

ARGUMENT

Petitioner is the victim of PROLIX continued and yet continuing neverending oppressive litigation, such as the court in 4623 (See Complaint par 12,pg 8 R) forever enjoined by final injunction in its final conclusive judgment therein. It is inconceivable that the Supreme Court of Wyoming in 50 Wyo 524, and in the Prohibition case, (See Complaint par. 39 et seq, pg. 19 et seq R) would itself unlawfully relitigate annul, and attack its own final, res judicata, CONCLUSIVE judgment in 40 Wyo 524, or permit any other subsequent collateral attack on the final decree, and title adjudged and decreed therein. It is inconceivable that the Court of Appeals could disregard the universally established law of the Supreme Court of the United States, and Federal Courts, including the same Court of Appeals, (D U A Uranium Co v U S 149 Fed Sup 667) and State Supreme Court, including Wyoming (Bank of Chadron v Anderson, 6 Wyo 518)andexpress Wyoming Statutes, -3-907- and all established law as decreed by thosd courts for other citizens under like conditions, and deny Petitioner the equal protection of the final CONCLUSIVE judgment of the court in 4623, under mandate of the Supreme Court of Wyoming 40 Wyo 524, and deprive Petitioner of his property legally deraigned thereunder, permit the taking of the property without due process of law, and deny Petitioner equal justic dunder law, and deny Petitioner a day in court to establish such unconstitutional deprivation of federal Civil Rights. It is not open to argument that the Wyoming court in 50 Wyo 277 was without jurisdiction to relitigate the final CONCLUSIVE judgment,

and title acquired at the sale, deed, and confirmation of sale and deed in 4623. Every single point and question relied on by 50 Wyo 277 had been expressly presented to, and finally adjudged in 40 Wyo 524 as against this alleged receiver. The two premises created by judicial assertion in 50 Wyo 277 were false in fact and in law. The report of the decision of the Court of Appeals, 251 Federal 2nd 61, it is stated: "Civil Right-Syl 1-Where every act complained of was done in the prosecution and decision of matters in a court of competent jurisdiction, having jurisdiction of the subject matter, and parties, and power and authority to decide the issues presented, no cause of action arose under the Civil Rights Act against the adverse parties in the State court litigation or against the trial judge or judges of the appellate court on the theory that protracted state court litigation had the designed conspiratorial effect of depriving plaintiff of his adjudicated property rights without due process of law or equal protection of Law." Under all law, the statements of the Court of Appeals was error, which a day in court would reveal. In support of this it cited 50 Wyo 227 and its own decision in 172 Fed 2nd 449. In the last case the court denied a day in court, granted Summary judgment on the motion of defendants that 50 Wyo 277 had held the sale in 4623 void. The court of Appeals disregarded the subsequent title acquired by deed Feb 20,1950. The Complaint herein stated a perfect claim for taking property without due process and denying equal justice. It is reasonable to conclude that what the Court of Appeals had in mind was to write into law the defense of Judicial Immunity of judges from suit because they cited two of their

own cases declaring such immunity. It failed to take notice of and adjudge the points of error assigned for appeal, such as denial of equal protection of Federal Rules of Civil Procedure, and other points assigned as error. The Court passed over the assignment of error of denial of equal protection of law, and taking property without due process of law, or to say why it denied Petitioner the equal protection of the final CONCLUSIVE judgment, sale and deed, in 40 Wyo 524, a court of full, complete competent jurisdiction. It passed over the allegation that the defendants have abused and misused the state judicial power to purposely deny equal justice, and to discriminate against Petitioner. The Court of Appeals took no notice of the allegation that the judges had acted through bias, prejudice, malice, and ill will in their judgments. It was the duty of the Court of Appeals to grant a day in court, and hear evidence in support of the Complaint, and to examine the decisions of the Supreme Court of the United States, and Federal Courts establishing the universal law that the judgment sale and deed to Tibbals, grantor of Petitioner in 4623, 40 Wyo 524 was CONCLUSIVE of the title of Petitioner. Further to examine and follow the law as declared in such decisions declaring that the Court in the subsequent collateral case, 50 Wyo 277 was WITHOUT JURISDICTION to relitigate such prior CONCLUSIVE judgment. In the light of the Complaint setting up a wilfull, biased, prejudiced and malicious abuse and misuse of State power, further substantiated by allegations of supporting facts all admitted and confessed, showing a denial of constitutional rights under the 5th and 14th Amendments, contrary to express statutes and the universally established

law of the entire land. The decision of the Court of Appeals does violence to and mocks the inscription adorning the entrance doorway of the Court, "REASON IS THE SOUL OF THE LAW." Then declared law has no SOUL, because the SOUL is VOID OF REASON. The effect of the decision is to say that the court in 4561, acting without jurisdiction, and without notice to Petitioner, can take the property of Petitioner, turn it over to a wilfull and malicious trespasser, hold him in possession 25 years, while he depletes the property, and then give a court deed to the trespasser. And all this contrary to right, justice or REASON. And contrary to express statutes of Wyoming, and the universally established law of the entire land. And above all, contrary to the Constitution of the United States.

The action of the Court of Appeals in decreeing judicial immunity to defendant Judges herein, under a Complaint alleging that the judges acted wilfully, maliciously, and were actuated through bias, prejudice, hatred, enmity and ill will, with the designed evil intent to purposely discriminate against Petitioner, and thereby take away his property without due process of law, and thereby deny him the equal protection of law, all in violation of his Civil Rights secured by 42 USCA 1983-5-6-8, is a challenge to the continued existence of Constitutional government. One or the other must and will go. In citing two other decisions of the same court, both decreeing Judicial Immunity for Judges, it is made to appear that this Court of Appeals is proudly striving to take the foremost lead in decreeing Judicial Immunity to Judges. Too many other Federal Courts are in the contest for first place honors. First it was Judicial Immunity for superior judges; then

extended to justices of the peace; then to attorneys; then to litigants; then to sheriffs and marshalls; then to witnesses; next, friends, relatives and business associates may ask admission to the favored class. The fundamental American concept of Constitutional government is equality. The creation of a special privileged class, superior to and immune from the inhibitions and prohibitions of the constitution is abhorrent and treasonable under the American concept of constitutional government. It is inconceivable that the American people will stand by and tolerate the first step toward the desecration and wiping out of the sacred heritage of equal rights under constitutional law, purchased at the great cost of untold lives of American patriots. "Illegitimate and unconstitutional practices get their first footing by silent approaches and silent deviations from legal modes of procedure. It is the duty of the Courts to be watchful for the Constitutional rights of the citizens, and against the stealthy encroachments thereon. The duty of the Court is to MAINTAIN THE CONSTITUTION AS THE FUNDAMENTAL LAW OF THE LAND. THIS DUTY IS IMPERATIVE AND UNCEASING. " Marbury v Madison 1 Cranch 137, 2 Led 60, quoted in Kurtz v Pittsburg (Pa) 31 Atl 2nd 257.

The decree of Judicial Immunity partakes of the nature of a favor decreed by one judge for a brother judge, and for the class to which both judges belong, a decree for one and for all.

It is inconceivable that Federal Judges, selected for their superior judicial fitness, their high intelligence, their exemplary character, their unfaltering patriotism,

loyalty and devotion to the American concept of constitutional government, of equality of man--and before entering upon their duties, being firmly bound by oath to uphold, support and defend the constitution and laws of the United States--then by a further oath not to decide through bias or other improper motive--and now a third oath required of the last federal judge confirmed, that he will not judicially legislate, modify or extend by judicial decree any law of congress--it is inconceivable that any such Honorable Judge could find in his conscience a constitutional directive permitting him to decree Judicial immunity and thereby create a specially privileged class superior to the constitution and whose membership in that specially privileged class is a release from their oath bound duty to preserve the constitutional equality of man and not to ignore the Bill of Rights, nor desecrate, despoil and wipe out the very constitution they are oath-bound to support.

Petitioner comes to this Court with a Complaint, alleging factual matters, substantiated by the universally established law of this court as decreed for other citizens under like conditions. Further substantiated by the Bill of Rights of the Wyoming constitution, the express statutory law of that state, and the decisions of the Wyoming Supreme Court decreed for other citizens under like conditions disclosing a taking of his property without due process of law, and a denial of equal justice under law, perpetrated on him by 25 years of the most extreme, intolerable tyrannical oppression ever recorded in judicial history. He asks his constitutional right to a day in court to establish his complaint by evidence. His Complaint asking redress is

answered by this court-NO COMMENT-Cert Dn with no reasons given as to why equal right and justice under the Constitution of the United States is not given him. In the founding of the American government, when our forefathers came to breaking away from the mother country and setting up a new government, in formulating a Declaration of Independence, out of respect and courtesy for the people of the mother country, they set forth the reasons why they were doing so, declaring: "A decent respect for the opinions of others require that we declare the reason and causes-etc." The Supreme Court of the United States is great and mighty, but still it is the servant of the people, honored and entrusted with the duty to preserve constitutional government. Bound and required to protect the most humble citizen of the land in his American constitutional right to equality of right and justice. And when this Petitioner comes to this court with a proper, and adequate Complaint, demanding the constitutional right of equality, he is entitled to sufficient respect and courtesy to be informed of the reasons and causes why he denied a day in court.

In the course of human events, it is said that all good things must in turn come to an end and pass away. So it is with constitutional governmnet in America. It too is on its way out with black robed judges performing the functions of undertaker, and poker-faced lawyers, branded on their foreheads with that little three lettered word-WIN, the emblem of professional greatness, the mark of legal, honor acting as pallbearers. Petitioner, just a humble, judicially classed inferior person not entitled to claim equal justice under law, is subjected to having his property taken without

due process of law, in open violation of the Bill of rights of the Constitution of the United States, in clearest disregard of the Bill of Rights of the Wyoming Constitution, in admitted contravention of the statutory law of Wyoming, and contrary to the universally established law of the United States, and the State of Wyoming as decreed for all other citizens under like conditions, presents his proper Complaint against such unconstitutional, illegal, discriminatory wrongs to the Federal Courts, asking the redress provided by the Civil Rights Acts of Congress only to be met with a denial of a day in court and presented with a judgment labeled and endorsed:DECREE OF JUDICIAL IMMUNIT Y. The pledge of the flag: ONE NATION UNDER GOD WITH EQUAL LIBERTY AND JUSTICE FOR ALL, is sterilized of all sincerity and meaning. The American citizens are divided into two classes, one favored class entitled to claim constitution rights and protection; The other inferior class, not entitled to seek or ask constitutional protection and rights. Likewise, Judges are divided into two classes. One class required to respect their oath-bound duty and uphold, support and defend the constitution as written. The other class given superiority over the constitution, and allowed to decide thru bias, prejudice, malice and hatred, to abuse and misuse judicial power and authority secured from accountability therefor.

QUESTION: WHEN IS A CONSTITUTION NOT A CONSTITUTION? AND WHEN IS A JUDGE NOT A JUDGE? THAT IS IN LAW?

But as said of the old soldier who has served so well his country in time of need, he cannot die, he just fades

away to live on forever in th d memories and hearts of those he served so well. So it is with the constitution of the United States, it cannot die for it brought a new government set up in a new land, conceived in liberty, justice, and equality, and dedicated to the proposition that all men are created equal. The blessings it wrought--the birth of the greatest nation on earth, with its citizens enjoying the greatest blessings on earth, equal liberty and justice, it too cannot die it just fades away, to live on forever as a cherished memory of the most sacred heritage ever possessed by any people. Judicial Immunity replaces the constitutions. Inferior citizens are excluded from courts, and denied a day in court with equal rights or equal justice.

While the Court of Appeals was decreeing Judicial Immunity to Judges as against Petitioner, the Supreme Court of Colorado, in the same City wherein the Court of Appeals was sitting in Colorado-in Racing Comm v Brush Racing Assn 316 Pac 2nd 58 was denouncing any claim of Immunity, even by a sovereign state, in these strong terms; "Sovereign immunity may be a proper discussion for students of mythology BUT FINDS NO HAVEN IN THIS COURT. The rights of citizens remain the same whether they collide with the individual or the government, and the judicial tribunals were wisely established to correct such matters."

Petitioner prays that a rehearing be granted and that the writ of Certiorari issue as prayed for herein. And further Petitioner prays and moves for permission to file this petition for rehearing and have the same considered, any restricting rule of this court to the contrary notwithstanding,

concerning matters arising after denial of the petition for the writ.

JOHN J. SPRIGGS, SR., PETITIONER, PRO SE

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Lander, Wyoming

CERTIFICATE OF COUNSEL

I, John J. Spriggs, Sr., petitioner herein, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and that it is restricted to grounds specified in Rule 58 of the Rules of this Court

and sets forth substantial grounds not previously presented in the petition for certiorari.

JOHN J. SPRIGGS, SR., PETITIONER

and Attorney Pro Se for Petitioner

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